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LEGAL IMMIGRATION REFORMS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND REFUGEE AFFAIRS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1611

A BILL TO AMEND THE IMMIGRATION AND NATIONALITY ACT TO EFFECT CHANGES IN THE NUMERICAL LIMITATION AND PREFERENCE SYSTEM FOR THE ADMISSION OF IMMIGRANTS

OCTOBER 23 AND DECEMBER 11, 1987

Serial No. J-100-41

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LEGAL IMMIGRATION REFORMS

FRIDAY, OCTOBER 23, 1987

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee convened, pursuant to notice, at 10:36 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Edward M. Kennedy (chairman of the subcommittee) presiding.

Also present: Senator Simpson.

Staff present: Jerry Tinker, staff director; Michael Myers, counsel; Heather Hodges, counsel; Melinda Nielson, chief clerk; Richard Day, minority staff director; Carl Hampe, minority counsel.

Senator **KENNEDY**. We will come to order.

I will ask my colleagues Senator D'Amato and Senator Moynihan if they would join us up here at the witness table. We are expecting Brian Donnelly.

I have a brief opening statement, and then we will move ahead with our hearing.

OPENING STATEMENT OF SENATOR KENNEDY

Senator **KENNEDY**. Today's hearing is to review legislation that will bring long-needed reform to our existing system of admitting immigrants to our country.

We are picking up where Congress left off last year when, thanks to the leadership and perseverance of Senator Simpson, Congress finally acted to deal with problems associated with illegal migration.

But we left for another day an equally important need to deal with reform of our legal immigration system. Both were at the heart of the recommendations of the Select Commission on Immigration and Refugee Policy, upon which both Senator Simpson and I served, and which have formed the basis for all recent proposals for immigration reform.

The bill before us, which I introduced earlier this year, reflects the Select Commission's recommendations as well as the basic elements of the bills the Senate passed twice under Senator Simpson's leadership. It builds upon this record, and I hope we can move it forward expeditiously this Congress.

We all agree that we must take some corrective actions to insure that our legal immigration system remains fair and flexible. We want to retain the principle of family reunification while promoting immigration in the national interest.

Over two decades ago, Congress passed landmark legislation that brought about sweeping changes in our legal immigration system through the elimination of the discriminatory national origins quota system as well as the Asian Pacific Triangle quota system. That legislation, the 1965 amendments to the Immigration and Nationality Act, has operated well and has gone far in redressing previous injustices in the system.

But the system is not perfect, and over the years some unforeseen problems have arisen. One of the issues that we will look at this morning and one that I am particularly concerned about is the question of how we can expand independent immigration and reopen our doors to potential immigrants who are unable to benefit from the current immigration law. It is a question of how we correct an unexpected imbalance stemming from the 1965 act—the inadvertent restriction on immigration from the "old seed" sources of our heritage.

The pending legislation will correct this shortcoming without departing from the principles of fairness and equity of the 1965 law. It protects the principle of family reunification, but it also creates a system by which older sources of immigration can once again have an opportunity to contribute to our Nation.

Over the years we have heard testimony from many immigration experts as well as from ethnic groups rightfully concerned about our immigration policy. Now is the time to move forward with legislation that will reflect these concerns and to strengthen our immigration heritage.

I recognize now our good friend, the Senator from Wyoming, who has Chaired this subcommittee, and who was, or I referred to earlier, the pioneer in the recent legislation that passed not only the Senate, but the House, and was signed into law and which is benefitting many people here under the amnesty provision.

Senator Simpson.

OPENING STATEMENT OF SENATOR SIMPSON

Senator SIMPSON. Thank you very much, Mr. Chairman.

Ted, I appreciate your comments. It could not have been done without your assistance, the past effort. You lent every possible bit of your attention to it as far as any political possibilities would allow, and I appreciated that very much. I greatly enjoy working with you; it is always splendid to do that.

So, I want to work with you on this one, too. We have new things to address after we correct illegal immigration, and I think the illegal immigration legislation is on track and working; amnesty is being accepted, and more people have come forward than any country on Earth who have ever been offered that remarkable act of grace; and employer sanctions, we want to see them working, and that they are done in non-discriminatory fashion, and for those things, we are here to perform our oversight function and see that they do work.

So I am very anxious to join you in this, and our visits together, I think we are pretty close in what we have in mind with regard to legal immigration and changes to be made.

I will be putting a bill in very shortly, in the next 2 or 3 weeks, to do the things we need to do. The basics are within your legislation, and we will gain more here in this hearing. And we will do it in a way which will serve the national interest.

I am very pleased to see that you have made legal immigration reform a priority for the subcommittee; that is very heartening. We do not want to go back into the past and into national origins and other such systems, but we certainly want to proceed. I think the new immigrants—that is what Father Ted Hesburgh talked about, and you and I served on his Commission—the "new seed" immigrant, "classic immigrant", if you will, as someone else described it, represents now only about 5 percent of our total immigration. And family reunification has kind of clogged our system particularly preference, and things like that need to be fully addressed.

So, I look forward to working with you indeed, as always, and with interested Members in the House on a bipartisan basis, because immigration reform, legal immigration reform, is now fully in the national interest.

I thank you, Mr. Chairman.

Senator **KENNEDY**. Thank you very much, Senator Simpson. We look forward to that common endeavor.

At this time I would like to place in the record the prepared statement of Senator Paul Simon along with the text of S. 1611.

[Information follows:]

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STATEMENT OF SENATOR PAUL SIMON ON S. 1611

LEGAL IMMIGRATION REFORM BILL

OCTOBER 23, 1987

MR. CHAIRMAN. I WANT TO THANK YOU FOR CONVENING THIS HEARING TODAY ON THE VERY IMPORTANT SUBJECT OF LEGAL IMMIGRATION REFORM. FOLLOWING THE YEARS OF EFFORT THIS SUBCOMMITTEE DEVOTED TO CHANGING OUR LAWS ON UNDOCUMENTED IMMIGRATION, I KNOW WE HAVE A GREAT DEAL OF WORK AHEAD OF US IN THIS AREA. WE ARE FORTUNATE TO HAVE THE EXPERTISE AND RESOURCES OF THE 1981 SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY CLOSE AT HAND, A COMMISSION UPON WHICH YOU AND OUR COLLEAGUE THE RANKING SENATOR SIMPSON SERVED SO WELL.

I HAVE HEARD A GREAT DEAL ABOUT S. 1611, THE BILL BEFORE US TODAY, AS I HAVE TRAVELED AROUND THE COUNTRY RECENTLY. THE REACTION HAS BEEN MIXED AS WOULD BE EXPECTED FOR ANY REFORM LEGISLATION WHICH VERY MUCH DEALS WITH HOW WE STAND IN THE INTERNATIONAL COMMUNITY AND HOW WE SEE OURSELVES AS A COUNTRY. MANY HAVE EXPRESSED CONCERNS WHICH I SHARE. TRAVELERS AND IMMIGRANTS AID OF CHICAGO AND ATTORNEY STEVEN CHU OF CALIFORNIA HAVE ADOPTED ANALYSES THAT I WOULD LIKE ENTERED INTO THE RECORD.

MR. CHAIRMAN, LET ME RAISE THESE CONCERNS WHICH I HOPE WILL BE ADDRESSED BY THE WITNESSES TODAY AND FROM TESTIMONY FROM ORGANIZATIONS AND EXPERTS THAT WE SHOULD SEEK OUT IN THE NEAR FUTURE. I SUPPORT THE DIVISION BETWEEN THE FAMILY PREFERENCES AND INDEPENDENT WORKER CATEGORIES. I AM PLEASED THAT WE ARE MOVING ON REDUCING THE HORRENDOUSLY LONG WAITING LIST FOR SOME SECOND PREFERENCE APPLICANTS. HOWEVER, I AM CONCERNED THAT THE BILL AS NOW DRAFTED DOES NOT TAKE INTO ACCOUNT SUFFICIENTLY THE INTEGRITY OF FAMILY UNITS, PARTICULARLY THE IMPORTANCE OF SIBLINGS AND ADULT CHILDREN. I WILL WORK TO FIND A SOLUTION WHICH SUFFICIENTLY PROTECTS THE ELIGIBILITY AND NUMBERS FOR THE FIFTH PREFERENCE BUT STILL IMPROVES THE SECOND PREFERENCE. WE NEED A BETTER BALANCE IN THAT AREA.

ANOTHER CONCERN I HAVE WHICH HAS BEEN SHARED BY SOME OF THE TESTIMONY SUBMITTED TO THIS SUBCOMMITTEE IS ON THE NEW POINT SYSTEM FOR THE INDEPENDENT CATEGORY. I AM CONCERNED THAT WE DO NOT UNDO THE TREMENDOUS PROGRESS OF THE 1965 ACT WHICH OPENED THE DOORS OF THIS COUNTRY TO ASIANS, PACIFIC ISLANDERS AND LATIN AMERICANS--DOORS WHICH HAD WRONGFULLY AND SHAMEFULLY BEEN CLOSED BY THIS CONGRESS SINCE THE LAST CENTURY.

FINALLY, I THINK WE MUST LOOK MORE CLOSELY AT THE PROVISIONS GRANTING NEW AUTHORITY TO THE EXECUTIVE BRANCH IN REVISING THE OVERALL NUMBERS IN THE FUTURE. MR. CHAIRMAN, I COMMEND YOU IN TAKING THE LEAD IN BRINGING THIS SUBJECT BEFORE THE SUBCOMMITTEE AND I LOOK FORWARD TO WORKING WITH YOU AND ALL OF THOSE WHO HAVE EXPRESSED INTEREST IN IMPROVEMENTS IN OUR NATIONAL IMMIGRATION POLICY.

Travelers & Immigrants Aid
Helping People In Transition

Travelers & Immigrants Aid
Of Chicago
327 South LaSalle Street
Chicago Illinois 60604
312 435 4500

IGN

September 23, 1987

The Honorable Paul Simon
United States Senator
230 South Dearborn Street
Chicago, Illinois 60604

Dear Senator Simon:

I am writing in reference to the Kennedy/Donnelly "Immigration Act of 1987" (S.1611) introduced by Senator Kennedy on August 6, 1987.

Travelers & Immigrants Aid (TIA) lauds Senator Kennedy's efforts to reform the visa preference system, in particular an increased commitment to second preference family reunification for legal permanent residents. TIA also supports the new independent category called for in the bill and affirms the establishment of a non-preference category.

Two aspects of the bill, however, are particularly troublesome.

.Limitation of 5th preference: The limitation of 5th preference to unmarried siblings is insensitive to the cultural familial perspectives of many ethnic groups, Asians in particular. The limitation of this definition may indeed be non-problematic to our Western perspective but is clearly unresponsive to family traditions of many of our ethnic citizens and residents.

.Identification of 36 preferential nations: While we support the non-preference category, we are opposed to the designation of 36 nations which are principally Caucasian in stock and European in geography. This country targeting potentially sets in place a trend that could revise immigration policy to the discriminatory precedents found in the National Origins Act. In drafting immigration reform, we must be careful not to return to former days when clear preference was given to Northern and Western Europeans and exclusionary principles were applied to those from Third World nations. If the concept of preferential nations can not be excluded in totality from the bill, we would recommend that a compromise alternative be suggested to provide a maximum of 5 points (in the point system for non-preference visas) for intending individuals from these countries.

Travelers & Immigrants Aid and the ethnic communities which it serves appreciate your historic leadership on behalf of Illinois' foreign born residents. We will greatly appreciate your ongoing leadership in crafting this bill into more responsive, less discriminatory legislation.

Sincerely,

Sid L. Mohn

The Rev. Dr. Sid L. Mohn
Executive Director

CHU & LAU, INC.
A Professional Law Corp.

400 S. ATLANTIC BLVD., SUITE #305, MONTEREY PARK, CA 91754
PHONE: (818) 289-9994, FAX: (818) 282-0804

[redacted]

ANALYSIS ON S. 1611
By Steve W. Chu, Esq.
Oct. 21, 1987

Summary of Difference between the Bill and the Current Law

1. Permanent Resident's Children

Current Law

Unmarried children of permanent resident(PR), regardless of age, are eligible for PR.

Bill

PR's unmarried children over 21 are not eligible for PR. Only PR's unmarried children 21 or under are eligible. However, PR's unmarried children 21 or under are entitled to PR through another provision, i.e., derivative status.

Net Result

The net result is that the benefits accorded to PR's children under the current law are completely wiped out by the Bill. These children, being cut from the "relative route", are forced to go through "employment route" to become permanent residents before they can join their family here in the United States. If they do not qualify for "employment route", they may never join their family in the United States.

2. US Citizen's Brothers and Sisters

Current Law

US Citizen's brothers and sisters are eligible for PR, regardless of marriage and age.

Bill

US Citizen's brothers and sisters who are married are not eligible for PR. Only unmarried brothers and sisters are eligible. Most of the brothers and sisters of naturalized US citizens are married because it will take, under the Bill, an alien 15 to 20 years from the time of application to become a permanent resident if he is a brother or sister of a US citizen. And the marriage status is determined not at the time of application, but at the time of interview which is 15 to 20 years from the date of the application. In addition, it will take a permanent resident five to seven years to become naturalized citizen which is a requirement before he or she may apply for his or her brothers and sisters.. Few people will remain unmarried by the time the interview is held.

Net Result

The net result of this change is that almost entire 5th preference is wiped out under the Bill. Those brothers and sisters of US citizen, being cut from "relative route", are forced to go through "employment route" to become permanent residents before they can join their family here in the United States. If they do not qualify for "employment route", they may never join their family in the United States.

3. Members of Professions

Current Law

Professionals who have a bachelor degree are eligible for PR.

Bill

Only professionals who have a doctoral degree are eligible. Currently, there are two ways to become PR under "employment route", namely, 3rd and 6th preference. Those who are not qualified under 3rd preference will go through 6th preference. Presently, the waiting period for 6th preference is two to three years. All of the foreign students who upon graduation wish to stay in the United States are becoming PR through "employment route". They obtain H-1 status to work in the United States legally while the PR application is pending. But H-1 is only good for five years, after which period the students would have to leave the country for one year before coming back to the States. This absence will cost them their jobs and their pending PR application as no employer are willing to sponsor PR application for an employee who already left the job. These people can hardly find the employment in the US when they are physically outside the United States. Luckily, so far, most of the students manage to become PR within five years.

Net Result

The immediate result of this change is that the 6th preference route would be jammed with people who do not have a doctoral degree, pushing the waiting period for 6th preference to five years. Worse yet, those who find themselves not qualified through "relative route" under the Bill will rush to become PR through 6th preference, further pushing the waiting period for 6th preference beyond the five year limitation. This means the death sentence for H-1 holders who are highly educated and highly needed by this country. The net result is drastic increase in P-6 applicant population and P-6 waiting period while quality professionals with bachelor and master degrees are turned away to other industrial countries.

4. Quota for Relative Route

Current Law	Bill	Actual Change
P-1: 54,000 persons	32,400 persons	- 21,600 persons
P-2: 70,200	140,400	+ 70,200
P-4: 27,000	21,600	- 5,400
P-5: 64,800	21,600	- 43,200
Total: 216,000	Total: 216,000	Total: 0

Net Result

The number of quota available for "relative route" is the same. Substantial increase for P-2 and decrease for all others. But the increase for P-2 does not serve any useful purpose because P-2 has not suffered a back log and under the Bill the number of qualified P-2 applicants would decrease substantially. This increase in P-2 quota is at most illusory.

5. Quota for Employment Route

Current Law	Bill	Actual Change
P-3: 10% or 27,000 persons	27,000 persons	0
P-6: 10% or 27,000	27,000	0
Nonpreference: 0	50,000	+ 50,000 persons

Net Result

There will be too many quota for P-3 for which only doctoral degree holders may qualify. The quota assigned to P-6 is too few and surely create traffic jam. An additional 50,000 quota for nonpreference will increase the worldwide quota to 320,000.

6. Nonpreference Route

Current Law

Non-existing under the current law.

Bill

A point system is established for qualifying nonpreference applicants who will become PR through random selection from qualified applicants who score 70 units or more.

30 units ---	If coming from one the 36 countries, 28 of which are European countries. Then Bill is not clear as to the meaning of the term "coming from".
20 units ---	If employment in US is arranged.
12 units ---	For having high school diploma.
10 units ---	For having bachelor degree
Up to 5 units ---	For having graduate degree
Up to 10 units ---	For having vocational preparation

10 units --- For being between 18 years of age and 40 years of age. 2 units deduction for every year in excess of 40.
Up to 20 units --- For having skills needed in the US.
Up to 10 units --- For having work experience relating to the skills needed in the US.
10 units --- For being a married brother or sister of a US citizen
10 units --- For being able to speak and read English

Total: 147 units

For an Asian whose native language is not English, his maximum score will most likely be 107. If he is not a married brother of a US citizen and does not have a bachelor degree, his maximum score will be 82. If he is also over 45 years of age, his maximum score will be 72. If he has employment arranged in the US, he will have to possess ALL of the following qualification to the utmost extent:

1. high school diploma, AND
2. perfect vocational preparation, AND
3. perfect skills needed in the United States, AND
4. perfect work experience relating to the skills.

For an European whose native language is English, his maximum score will most likely be 147. If he is not a married brother of a US citizen and does not have a bachelor degree, his maximum score will be 122. If he is also over 45 years of age, his maximum score will be 112. If he has employment arranged in the US, he will qualify if he possesses ANY of the following qualification:

1. high school diploma, OR
2. perfect vocational preparation, OR
3. perfect skills needed in the United States, OR
4. perfect work experience relating to the skills.

Net Result

More Europeans with less qualification will immigrate to the US, weakening the strength the US work force and causing adverse impact to the domestic job market and economy.

THE BILL'S IMPLICATION

A great deal of the families will never enjoy reunification under the Bill. And family unity is the very foundation of this country. This Bill will create the impression among perspective immigrants that the United States is no longer is desirable place for immigration, especially when Canada, Australia, and many other countries are relaxing the standards of immigration in an attempt to attract foreign talents and investment. Without continuous infusion of quality immigrants, the United States will no longer be the United States.

This Bill definitely gives the flavor of anti-Asian and pro-European. Asian immigrants' interest need not be sacrificed in order to accommodate those of Europeans. When the world's economy is turning to Pacific Rim, one has to wonder the wisdom of turning our back on Asia as proposed by the Bill.

SUGGESTION

This Bill should be opposed in its entirety. But political consideration may render the following options desirable:

Option 1: Keep the current preference system intact. Add a nonpreference category as proposed by the Bill and 50,000 quota to people coming from those 36 countries, making the worldwide quota 320,000, an increase of 50,000 from current level.

Option 2: Squeeze 50,000 quota from current "relative route", namely, P-1, P-2, P-4, and P-5, and keep P-3 and P-6 intact.

Current Law	Proposed	Actual Change
P-1: 54,000 persons	27,000 persons	- 27,000 persons
P-2: 70,200	70,200	+ 0
P-4: 27,000	13,500	- 13,500
P-5: 64,800	55,300	- 9,500
Total: 216,000	Total: 166,000	Total: - 50,000

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100TH CONGRESS
1ST SESSION

S. 1611

To amend the Immigration and Nationality Act to effect changes in the numerical limitation and preference system for the admission of immigrants.

IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, AUGUST 5), 1987

Mr. KENNEDY (for himself and Mr. MOYNIHAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend the Immigration and Nationality Act to effect changes in the numerical limitation and preference system for the admission of immigrants.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "Immigration Act of 1987".

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—Whenever in this Act an amendment or repeal is expressed as an amendment to, or repeal of, a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

SEC. 2. NUMERICAL LIMITATIONS.

Subsection (a) of section 201 (8 U.S.C. 1151) is amended to read as follows:

"(a) Exclusive of special immigrants defined in section 101(a)(27), immigrants born to permanent resident aliens during a temporary visit abroad, immediate relatives specified in subsection (b) of this section, immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, aliens who are admitted or granted asylum under section 207 or 208, aliens provided records of permanent residence under section 214(d), and aliens whose status is adjusted to permanent resident status under section 245A, aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

"(1) family reunification immigrants described in section 203(a) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a), in a number not to exceed in any fiscal year the number equal to (A) 216,000, plus (B) the difference (if any) between the maximum number of visas which may be issued under paragraph (2) during the prior fiscal year and the number of visas issued under that paragraph during that year, and not to exceed in any of the first three quarters of any fiscal year 27 per centum of the numerical limitation for all of such fiscal year, and

"(2) independent immigrants described in section 203(b) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b), in a number not to exceed in any fiscal year the number equal to (A) 104,000, plus (B) the difference (if any) between the maximum number of visas which may be issued under paragraph (1) during the prior fiscal year and the number of visas issued under that paragraph during that year, and not to exceed in any of the first three quarters of any fiscal year 27 per centum of the numerical limitation for all of such fiscal year.".

SEC. 3. REVIEW AND REVISION OF NUMERICAL LIMITATIONS.

Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended by adding at the end thereof the following:

"(c)(1) Beginning two years after the effective date of the Immigration Act of 1987, and at intervals of five years thereafter, the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Health and Human Services, shall jointly prepare and transmit to the President and to the Judiciary Committees of the Congress a report discussing the need to revise the numerical limitations contained in subsection (a). In preparing such report, the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Health and Human Services shall consider—

"(A) the family reunification requirements of citizens of the United States and of aliens admitted for permanent residence in the United States;

"(B) the impact of immigration on employment and other economic and domestic conditions in the United States;

"(C) the impact of immigration with respect to demographic and fertility rates and resources and environmental factors; and

"(D) the foreign policy and national security interests of the United States.

"(2) Not later than 60 days after receipt of such report, the President shall transmit to the Congress a certification on whether the numerical limitations contained in paragraphs (1) and (2) of subsection (a) should be changed, and if so, what the new numerical limitations should be. Before transmittal of such certification, the President shall, to the maximum extent practicable, solicit the views of individuals from the private sector and from appropriate Members of Congress.

"(3) Notwithstanding the provisions of subsection (a), unless the Congress within 30 calendar days after receiving such certification enacts a joint resolution prohibiting the numerical limitations contained in such certification from taking effect, any reference in this Act to the numerical limitations contained in subsection (a)(1) or subsection (a)(2) for a period of five consecutive fiscal years beginning with the first fiscal year after the close of such 30-day period shall be deemed to refer to numerical limitations contained in such certification with respect to reunification immigrants or independent immigrants, respectively. Any such joint resolution shall be considered in the Senate in accordance with subsection (e).

"(d) For the purpose of expediting the consideration and adoption of joint resolutions under subsection (c)(3), a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(e)(1) For purposes of subsection (c)(3), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

"(2) Paragraphs (3) and (4) of this subsection are enacted—

"(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of joint resolutions referred to in subsection (c)(3), and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

"(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

"(3)(A) If the committee of the Senate to which has been referred a joint resolution relating to a certification has not reported such resolution at the end of ten calendar days after its introduction, not counting any day which is excluded under paragraph (1) of this subsection, it is in order to move either to discharge the committee from further consideration of the joint resolution or to discharge the committee from further consideration of any other joint resolution introduced with respect to the same certification which has been referred to the committee, except that no motion to discharge shall be in order after the committee has reported a joint resolution with respect to the same certification.

"(B) A motion to discharge under subparagraph (A) of this paragraph may be made only by a Senator favoring the joint resolution, is privileged, and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the joint resolution, the time to be divided equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(4)(A) A motion in the Senate to proceed to the consideration of a joint resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(B) Debate in the Senate on a joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(C) Debate in the Senate on any debatable motion or appeal in connection with a joint resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a joint resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(D) A motion in the Senate to further limit debate on a joint resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a joint resolution is in order in the Senate.".

SEC. 4. PREFERENCE AND NONPREFERENCE ALLOCATION SYSTEMS.

(a) IN GENERAL.—(1) Section 203 (8 U.S.C. 1153) is amended—

(A) by redesignating subsections (b) through (e) as subsections (e) through (h), respectively, and

(B) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) PREFERENCE ALLOCATION FOR FAMILY REUNIFICATION IMMIGRANTS.—Aliens subject to the numerical limitation specified in section 201(a)(1) for family reunification immigrants shall be allotted visas as follows:

"(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 15 percent of such numerical limitation, plus any visas not required for the class specified in paragraph (4).

"(2) SPOUSES AND CHILDREN OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are the spouses or children of an alien lawfully admitted for permanent residence or who—

"(A) as of the date of enactment of the Immigration Act of 1987, had a petition filed on their behalf for preference status by reason of the relationship described in this paragraph as in effect on such date and such petition was subsequently approved, and

"(B) continue to qualify under the terms of the Act as in effect on such date,

shall be allocated visas in a number not to exceed 65 percent of such numerical limitation, plus any visas not required for the class specified in paragraph (1).

"(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 10 percent of such numerical limitation, plus any visas not required for the classes specified in paragraphs (1) and (2).

“(4) Unmarried brothers and sisters of citizens and previous fifth preference.—

“(A) qualified immigrants who are the unmarried brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, and

“(B) qualified immigrants who—

“(i) as of the date of enactment of the Immigration Act of 1987 had a petition filed on their behalf for preference status by reason of the relationship described in paragraph (5) of section 203(a) of this Act as in effect on the day before such date and such petition was subsequently approved, and

“(ii) continue to qualify under the terms of this Act as in effect on the day before such date,

shall be allocated visas in a number not to exceed 10 percent of such numerical limitation, plus any visas not required for the classes specified in paragraphs (1) through (3).”.

“(b) Preference and Nonpreference Allocation for Independent Immigrants.—Aliens subject to the numerical limitation specified in section 201(a)(2) for independent immigrants shall be allocated visas as follows:

"(1) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING DOCTORAL DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—Qualified immigrants who are members of the professions holding doctoral degrees (or the equivalent degree) or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States, shall be allocated visas, except that not more than 27,000 visas in a fiscal year may be allocated under this paragraph. The Attorney General may, when he deems it to be in the national interest, waive the requirement of the preceding sentence that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States. In determining under this paragraph whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

"(2) SKILLED WORKERS.—Qualified immigrants who are capable of performing skilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States, shall be allocated in any fiscal year not more than 27,000 visas.

"(3) NONPREFERENCE ALIENS.—(A)(i) Visas authorized in any fiscal year under section 201(a)(2), less those required for issuance to the classes specified in paragraphs (1) and (2), shall be made available to other qualified immigrants selected at random by the Secretary of State from among aliens at least 18 years of age who qualify to be registered for a visa under subparagraph (C).

"(ii) The Secretary of State shall prescribe such regulations as may be necessary to provide a means for the selection of the qualified immigrants under this paragraph.

"(B) Beginning with the effective date of the Immigration Act of 1987, each alien applying for a visa under this paragraph shall be accorded units of assessment based on eligibility criteria as follows:

"(i) for aliens coming from any country adversely affected by the enactment of Public Law

89-236, as determined by the Secretary of State, 30 units of assessment;

"(ii) for aliens whose employment in the United States has already been arranged, 20 units;

"(iii) for aliens having successfully completed grade school through high school or its educational equivalent, 12 units;

"(iv) for aliens who were awarded bachelors' degrees or their equivalent, 10 units;

"(v) for aliens who were awarded graduate degrees, a number of units up to 5 units to be determined by the Secretary of Education based on the level of the degree;

"(vi) to the extent that the aliens have vocational preparation, the number of units for such preparation to be determined by the Secretary of Labor up to 10 units;

"(vii) for aliens not less than 18 years of age or more than 40 years of age, 10 units, except that 2 units shall be deducted for every year in excess of 40;

"(viii) to the extent that the aliens have skills determined by the Secretary of Labor to be needed in the United States, up to 20 units;

"(ix) to the extent the aliens have work experience relating to the skills described in clause (viii), the number of units to be determined by the Secretary of Labor up to 10 units;

"(x) for aliens who are the married brothers or sisters of citizens of the United States, if such citizens are at least twenty-one years of age, 10 units; and

"(xi) aliens speaking and reading the English language, 10 units.

"(C) No alien shall be qualified to be registered for a visa under this paragraph unless such alien has been accorded at least 70 units of assessment under subparagraph (B).

An immigrant visa shall not be issued to an immigrant under paragraph (1) or (2) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). The provisions of section 212(d)(11) shall apply with respect to any alien petitioning to be classified as a preference immigrant under paragraph (1).

"(c) GUIDE FOR ALLOCATION BETWEEN PREFERENCE SYSTEMS.—Where it is determined that the maximum number of visas will be made available under section 202(a)(2) to natives of any single foreign state (defined in section 202(b)) or any dependent area (defined in section

202(c)) in any fiscal year, in determining whether to provide for visas to such natives under the preference system described in subsection (a) or that described in subsection (b), visa numbers with respect to natives of that state shall be allocated (to the extent practicable and otherwise consistent with this section) in a manner so that the ratio of—

"(1) the sum of (A) the number of family reunification immigrants described in subsection (a), and (B) the number of immigrants born to permanent residents during a temporary visit abroad, immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative or under section 203(a), and aliens provided records of permanent residence under section 214(d), who are natives of such state and who are issued immigrant visas or otherwise acquire the status of aliens lawfully admitted to the United States for permanent residence in that fiscal year, to

"(2) the sum of (A) the number of independent immigrants described in subsection (b), and (B) the number of special immigrants defined in section 101(a)(27) (other than those described in subparagraph (A) thereof) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b), who are natives of such state and who are issued immigrant visas or otherwise acquire the status of aliens lawfully admitted to the United States for permanent residence in that fiscal year,

is equal to 4 to 1.

"(d)(1) A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a) or (b), be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, his spouse or parent.

"(2) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.".

(2) Subsection (e) of such section, as so redesignated, is amended—

(A) by inserting "or under subsection (b)" after "subsection (a)" the first place it appears, and

(B) by striking out "subsection (a)" the second place it appears and inserting in lieu thereof "the respective subsection".

(b) ELIMINATING INTRA-COUNTRY PREFERENCE SYSTEM.—Section 202 (8 U.S.C. 1152) is amended by striking out subsection (e), section 204 (8 U.S.C. 1154) is amended by striking out subsection (f), and section 245(b) (8 U.S.C. 1255(b)) is amended by striking out "202(e) or".

(c) CONFORMING AMENDMENTS.—(1)(A) Subsection (f) of section 203 (8 U.S.C. 1153), as redesignated by subsection (a)(1), is amended by striking out "paragraphs (1) through (6) of subsection (a)" and inserting in lieu thereof "subsection (a) or pursuant to paragraphs (1) through (3) of subsection (b)".

(B) Subsection (g) of such section, as so redesignated, is amended by striking out "paragraphs (1) through (6) of subsection (a)" and inserting in lieu thereof "subsection (a) or paragraphs (1) through (3) of subsection (b)" each place it appears.

(2)(A) Subsection (a) of section 204 (8 U.S.C. 1154) is amended—

(i) by striking out "paragraph (1), (4), or (5) of section 203(a)" and inserting in lieu thereof "paragraph (1), (3), or (4) of section 203(a)",

(ii) by striking out section 203(a)(3)" and inserting in lieu thereof "paragraph (1), of section 203(b)", and

(iii) by striking out "203(a)(6)" and inserting in lieu thereof "203(b)(2) or 203(b)(3)".

(B) Subsection (b) of such section is amended by striking out "section 203(a) (3) or (6)" and inserting in lieu thereof "paragraph (1), (2), or (3) of section 203(b)".

SEC. 5. LABOR CERTIFICATION.

(a) CHANGE IN DETERMINATION.—Paragraph (14) of section 212(a) (8 U.S.C. 1182(a)) is amended by striking out "(A)" and all that follows through the end and inserting in lieu thereof the following: "(A) there are not sufficient qualified workers (or equally qualified workers in the case of aliens (i) who are members of the teaching profession or who have exceptional ability in the sciences or arts) available in the United States in the occupations in which the aliens will be employed; and (B) the employment of aliens in such occupations will not adversely affect the wages and working conditions of workers in the United States who are similarly employed. In making such determinations the Secretary of Labor may use labor market information without reference to the specific job opportunity for which certification is requested. Except as provided in subsection (d)(11), an alien on behalf of whom a certification is sought must have an offer of employment from an employer in the United States. The exclusion of aliens under this paragraph shall only apply to preference immigrants described in section 203(b) (1) and (2). Decisions of the Secretary of Labor made pursuant to this paragraph, including the issuance and content of regulations and the use of labor market information under this paragraph, shall be reviewable by an appropriate district court of the United States, but the court shall not set aside such a decision unless there is compelling evidence that the Secretary made such decision in an arbitrary and capricious manner;".

(b) WAIVER OF OFFER OF EMPLOYMENT REQUIREMENT.—Section 212(d) (8 U.S.C. 1181(d)) is amended by adding at the end the following new paragraph:

"(11) The requirement in paragraph (14) of subsection (a) relating to an offer of employment from an employer in the United States may be waived with respect to any alien seeking to enter the United States as an immigrant under section 203(b)(1), if the Attorney General deems it to be in the national interest.".

(c) STUDY.—The Secretary of Labor shall conduct a study to determine the means by which the process for obtaining a labor certification under section 212(a)(14) of the Immigration and Nationality Act may be streamlined.

(d) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary of Labor shall prepare and transmit to the Congress a report setting forth the findings of the study required by subsection (c), together with recommendations for carrying out such findings.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of State such sums as may be necessary in order to implement section 203(b)(3) of the Immigration and Nationality Act, as amended by this Act.

SEC. 7. EFFECTIVE DATES AND TRANSITION.

(a) EFFECTIVE DATE.—The amendments made by this Act shall apply to the admission of aliens to the United States on and after the first day of the first fiscal year beginning at least 180 days after the date of enactment of this Act (hereafter in this Act referred to as the "effective date").

(b) TRANSITION.—(1) In the case of a petition filed under section 204(a) of the Immigration and Nationality Act before the effective date, such petition shall be deemed, as of such date, to be a petition for the new corresponding preference or nonpreference status (as defined in paragraph (2)), and the priority date for such petition shall remain in effect.

(2) For purposes of paragraph (1), the term "new corresponding preference or nonpreference status" means, in the case of a petition for a—

(A) preference status described in section 203(a)(1) of the Immigration and Nationality Act (as in effect on the day before the effective date), the preference status described in such section as in effect after such date;

(B) preference status described in section 203(a)(2) of such Act (as in effect on the day before the effective date), the preference status described in such section as in effect after such date;

(C) preference status described in section 203(a)(3) of such Act (as in effect on the day before the effective date), the preference status described in paragraph (1) of section 203(b) of such Act as in effect after such date;

(D) preference status described in section 203(a)(4) of such Act (as in effect on the day before the effective date), the preference status described in section 203(a)(3) of such of such Act as in effect after such date;

(E) preference status described in section 203(a)(5) of such Act (as in effect on the day before the effective date), the preference status described in section 203(a)(4) of such of such Act as in effect after such date;

(F) preference status described in section 203(a)(6) of such Act (as in effect on the day before the effective date), the preference status described in section 203(b)(2), in the case of skilled labor, or the nonpreference status described in section 203(b)(3), in the case of unskilled labor, of such Act as in effect after such date; and

(G) nonpreference status described in section 203(a)(7) of such Act (as in effect on the day before the effective date), the nonpreference status described in section 203(b)(3) of such Act (as in effect after such date).

(c) ADMISSIBILITY STANDARD.—When an immigrant, in possession of an unexpired immigrant visa issued before the effective date, makes application for admission, his admissibility under paragraphs (20) and (21) of section 212(a) shall be determined under the provisions of law in effect on the date of the issuance of such visa.

Senator **Kennedy**. We have a very distinguished panel including our friend and colleague, Senator Moynihan, who has been an original cosponsor of this legislation and has been very much involved in both the history of immigration, writing about it, thinking about it, working on it, and we welcome his testimony; Senator D'Amato, who has often expressed his very profound concern about immigration policy and fairness in our immigration policy, has spoken to me a number of times about this question, and so we look forward to hearing from Al D'Amato; and Brian Donnelly, who has been the real leader in the House of Representatives and really, as national leader, in the whole issue of immigration reform. He has been the prime House sponsor of the Legal Immigration Act of 1987, and he has been addressing this issue for many, many years. So we look forward to his comments and testimony here this morning.

We will start off with Senator Moynihan from New York.

STATEMENT OF A PANEL INCLUDING: HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR, STATE OF NEW YORK; HON. ALFONSE D'AMATO, U.S. SENATOR, STATE OF NEW YORK; AND HON. BRIAN DONNELLY, MEMBER OF CONGRESS, STATE OF MASSACHUSETTS

Senator **Moynihan**. Mr. Chairman, I have a statement I would like to place in the record.

To be brief and just a bit speculative, as both you and Senator Simpson have been, and first to thank you and Mr. Donnelly for your initiative here, you spoke of fairness in this subject, and it is not wholly clear what criteria establish fairness, but absent any rules, experience probably is a fair one.

We are coming around in a cycle. Our first immigration legislation—apart from the Chinese Exclusion Acts of the nineties—we were well into the second centrury of this country before we even commenced regulating immigration at all—and never from the Western Hemisphere until the last few decades.

That first legislation in 1924 had in mind keeping the United States exactly as it once had been. It set national origin quotas on the basis of the 1890 Census. It was pro Northern European, pro Western European, and openly so. It was pretty close to nativist legislation, if you like, although some of the natives were not very welcome when they arrived as, for example, the Irish—not unwelcome, but not altogether assimilable, some thought.

The 1965 legislation was a direct response to that and a reaction to it, and it attempted to undo that earlier bias, and it maybe overdid in that regard. I mean, I think the Select Commission that, Senator Simpson, you served on, and Senator Kennedy—I think Father Hesburgh, as you said, Senator Simpson, was right about the new arrangements which, by stressing family unification and family ties, clogged the system in that manner and cut off access to this country from people and nations where immigration took place three or four generations ago.

Is there some principle of equity here? I do not think there is a rule, but I think there has been an experience. The effort to limit immigration in 1924 to some groups, to prefer some groups over others, was not well received. It was not right. It was seen by us not to be fair.

Now, we seem to have moved too far in the other direction, and I think a mid-course correction is in order. I think what you have proposed, Senator Kennedy and Mr. Donnelly, is certainly moderate, reasonable, and there are a lot of people in this room who would like to see it happen.

I make one point, and it is worth making. We are not an overpopulated country. We are an underpopulated country—need I say that to the Senator from Wyoming; you have probably got as many people as you like, but——

Senator **Simpson**. We have 100,000 square miles out there.

Senator **Moynihan** [continuing]. There is room for more if you had to find it.

And just a little thing—the United States birth rate fell below the reproduction level 17 years ago. It will be a long time before the population starts declining. But literally, at this rate of reproduction, the American population at some point in the next century will in fact decline. There is room for some more people in this country; there always has been and should be.

Thank you.

Senator **Kennedy**. Thank you very much, Senator Moynihan. Having that historical perspective is very helpful to us.

[Prepared statement follows:]

STATEMENT OF
SENATOR DANIEL PATRICK MOYNIHAN
IN SUPPORT OF THE IMMIGRATION ACT OF 1987
SUBCOMMITTEE ON IMMIGRATION HEARING
OCTOBER 23, 1987

On August 6, 1987, I was pleased to join Senator Kennedy in introducing the Immigration Act of 1987, S.1611. This proposal would increase the number of immigrant visas available under the current system from 270,000 to 320,000, of which 50,000 would be distributed according to a point system which would benefit prospective immigrants from Western European and other countries who have been virtually shut out from obtaining visas under the current preference system.

The primary benefit of this bill for these immigrants is that they will be able to compete for 50,000 visas. Currently, those applying under the non-preference category are not granted visas because the preference categories now fill up the 270,000 quota.

Fairness is at issue here. One need only look at the countries of Western Europe with strong historical roots in America to see how the Immigration and Nationality Act Amendments of 1965 radically changed the balance of immigration. The 1965 Act established a preference system that strongly favors individuals that have close relatives who recently emigrated to the United States.

That is all well and good. But the system now works to the disadvantage of individuals from countries which sent the first waves of immigrants to America. Since most of the immigrants from Europe emigrated long before 1965, prospective immigrants from those countries do not have close relatives in the United States to bring them in. In addition, many of those seeking to come to the U.S. from these countries do not have the skills deemed useful to the U.S.

We should remember that the idea of the U.S. as a melting pot is as old as the Republic. In 1782, naturalized New Yorker M-G. Jean de Crevecoeur wrote:

> I could point out to you a family whose grandfather was an Englishman, whose wife was Dutch, whose son married a French woman, and whose present four sons have now four wives from different nations. He is an American, who leaving behind him all him ancient prejudices and manners, receives new ones from the new mode of life he has embraced... Here individuals of all nations are melted into a new race of men...

In 1783, George Washington addressing a group of "inhabitants of the Kingdom of Ireland who have recently arrived in the City of New York," proclaimed that:

> The bosom of America is open to receive not only the opulent and respectable stranger, but the oppressed and persecuted of all nations and religions, whom we shall welcome to a participation of all our rights and privileges...

As the Eighteenth century passed, and the number of individuals and nations grew, the confidence that they could all be fused together waned, and so also was the conviction that this would be a good thing. In steady succession, new and selective barriers were raised against immigrants, beginning in 1882 when the first general immigration law was enacted to stop Chinese immigration. In 1924, the National Origins Law (Johnson-Reed Act) set temporary annual quotas at two percent of the nationality's U.S. population based on 1890 Census and set immigration limit of 150,000 in any one year from non-Western Hemisphere countries. In 1965, the Immigration and Nationality Act Amendments abolished the national origins system, and established preference system and annual ceilings for countries.

We have now turned full circle to a more generous, humane immigration policy which attempts not to discriminate against particular nations. Yet, some fine tuning is necessary. This bill addresses some of the problems identified by the distinguished Select Commission on Immigration and Refugee Policy, which issued its report in March 1981. Led by Rev. Theodore M. Hesburgh, then-President of the University of Notre Dame and members which included Chairman Kennedy and Senator Simpson, the Commission conducted an exhaustive study of immigration policy in this country.

The Commission's report noted that:

> The low priority accorded nonfamily immigrants and a cumbersome labor certification process for clearing them for admission has made it difficult for persons without previous family ties in the United States or extensive training and skills to immigrate.

We need to restore fairness and balance to our immigration laws to ensure that certain individuals are not penalized because of their long heritage in this country. Certainly the interests of family reunification are great and our immigration policies should not hamper such. Indeed, I was an original cosponsor of an amendment to the State Department Authorization Act, along with Chairman Kennedy, to prevent the deportation of family members of persons who qualify for legalization under the Immigration Reform and Control Act.

However, we need to help the descendants of our forefathers, to open the doors to opportunity for them also. I believe that the Immigration Act of 1987 does that and I urge the members of this Subcommittee to act expeditiously on this bill.

Senator KENNEDY. We recognize Senator D'Amato.

STATEMENT OF SENATOR ALFONSE M. D'AMATO

Senator D'AMATO. Mr. Chairman, first let me express to you my strongest possible support for your legislation that is embodied in S. 1611.

Mr. Chairman, the present law, can be improved, and that is exactly what your bill the Immigration Act of 1987, does. It makes it fairer. Not only is it fair to those who seek to be legal residents, and hopefully, citizens of this Nation, but it is also in our own national interest.

As one whose grandparents came through the Great Hall of Ellis Island in 1905 and 1912, I often wonder what if the present law had been in effect at that time. The answer is they would not have qualified, and they would not have been able to enter this country. My grandparents had no immediate relatives in this country, as the law now requires in most cases; but they did have an unquenchable thirst for freedom and a strong belief in the American dream. And that hope and dream exists for many who still would seek entry to this country, and who have a great contribution to make to this Nation.

Eighty percent of all immigrant visas issued today, or 216,000 out of an annual total of 270,000, are set aside for immediate relatives—husbands, wives, sons, daughters, brothers and sisters—of U.S. citizens and permanent legal residents. That leaves only 20 percent of the visas set aside for those in professions, those with exceptional ability, and skilled and unskilled workers.

Now, family reunification is a goal that we all support, and I embrace your bill enthusiastically because it continues to encourage that goal. But what about those who have no immediate relatives in the United States? The law shuts them out, because they are from countries like Ireland or Italy, whose days of massive immigration are long in the past. So that people from those countries do not have immediate relatives who are American citizens or permanent residents.

Mr. Chairman, that is an injustice which I believe we should work to correct. Senator Simpson's work in this area has been renowned. Even the State Department has recognized that there are some 36 countries that the immigration system adversely affects. Some of those countries are: Argentina, Germany, Indonesia, Ireland, Italy, Japan, Poland, and Tunisia.

Now, it is simply not fair to penalize so many countries, and it is not in our self-interest. By closing the doors of citizenship to people of so many nations, we are depriving ourselves of their great talents, skills, diversities, and energy, and that is what has made this Nation a great nation; it certainly has contributed.

S. 1611 would change the present system to the benefit of everyone by creating an additional 50,000 annual visas and assigning the new visas on a new basis. It gives applicant credit for their education, skills, and citizenship in adversely affected countries.

That is a fair approach; it is one that serves our national interest. And I certainly pledge to you my full support in securing the passage of this bill and its enactment into law. And I want to commend you, Mr. Chairman, for undertaking this.

If I might digress for just a moment, Mr. Chairman, one of my constituents, Mr. James Hallisey, one of Cardinal O'Connor's legal advisors, has contacted me with respect to a related matter, and I would appreciate it if his proposal could be submitted to today's witnesses for possible comments on the record.

Mr. Hallisey, who is an attorney and a student of immigration issues, is concerned about the fact that so many people fall into a kind of legal limbo.

Your bill addresses those who seek to enter the United States starting next year. Last year's immigration bill provided amnesty for those entering prior to January 1, 1982. But what about those in the United States illegally, who have arrived here since January 1, 1982?

The Immigration and Naturalization Service has estimated that 3.5 million people would come forward to seek amnesty. Now it appears that maybe 1.5 million may apply by May of 1988. That leaves some 2 million expected amnesty slots that will not be filled.

Mr. Hallisey suggests making those slots, or some percentage of them, available to illegal aliens who have arrived here since January 1, 1982. He further recommends making half of them, or a percentage of the new amnesty positions, available to people from the 36 adversely affected countries, on the basis of the point system created under your legislation, S. 1611, and the other half available to people from other countries.

I certainly would be appreciative if we could get some comments from our witnesses today with respect to Mr. Hallisey's proposal. I think it does deserve some consideration.

Thank you, Mr. Chairman.

Senator Kennedy. If you would give us that proposal, I will make it available to all of the members and we will make those comments a part of the record.

Thank you very much.

[The prepared statement of Senator D'Amato and the above mentioned proposal follow:]

STATEMENT BY SENATOR ALFONSE D'AMATO
SENATE COMMITTEE ON THE JUDICIARY
HEARING ON S. 1611
AMENDING THE IMMIGRATION AND NATIONALITY ACT
OCTOBER 23, 1987

MR. CHAIRMAN, LET ME FIRST EXPRESS THE STRONGEST POSSIBLE SUPPORT FOR YOUR BILL, S. 1611. PRESENT IMMIGRATION LAW MUST BE CHANGED BECAUSE IN TOO MANY CASES IT IS NOT FAIR AND IT IS NOT IN OUR NATIONAL INTEREST.

AS ONE WHOSE GRANDPARENTS CAME THROUGH THE GREAT HALL OF ELLIS ISLAND IN 1905 AND 1912, I OFTEN WONDER: WHAT IF THE PRESENT LAW HAD BEEN IN EFFECT AT THAT TIME? THEY WOULD NOT HAVE QUALIFIED TO ENTER THIS COUNTRY. MY GRANDPARENTS HAD NO IMMEDIATE RELATIVES IN THIS COUNTRY, AS THE LAW NOW REQUIRES IN MOST CASES. BUT THEY DID HAVE AN UNQUENCHABLE THIRST FOR FREEDOM, AND A STRONG BELIEF IN THE AMERICAN DREAM.

80 PERCENT OF ALL IMMIGRANT VISAS ISSUED TODAY --OR 216,000 OUT OF AN ANNUAL TOTAL OF 270,000 VISAS-- ARE SET ASIDE FOR THE IMMEDIATE RELATIVES (HUSBANDS, WIVES, SONS, DAUGHTERS, BROTHERS AND SISTERS) OF U.S. CITIZENS, AND PERMANENT LEGAL RESIDENTS. ONLY 20 PERCENT OF THE VISAS ARE SET ASIDE FOR THOSE IN THE PROFESSIONS, THOSE WITH EXCEPTIONAL ABILITY, AND SKILLED AND UNSKILLED WORKERS.

FAMILY REUNIFICATION IS A GOAL WE ALL SUPPORT, AND I EMBRACE YOUR BILL ENTHUSIASTICALLY BECAUSE IT CONTINUES TO

ENCOURAGE THAT GOAL. BUT WHAT ABOUT THOSE WHO HAVE NO IMMEDIATE RELATIVES IN THE UNITED STATES? THE LAW SHUTS THEM OUT BECAUSE THEY ARE FROM COUNTRIES LIKE IRELAND OR ITALY, WHOSE GREAT DAYS OF IMMIGRATION ARE LONG IN THE PAST, SO PEOPLE FROM THOSE COUNTRIES DO NOT HAVE IMMEDIATE RELATIVES WHO ARE AMERICAN CITIZENS OR PERMANENT RESIDENTS. THAT IS AN INJUSTICE WHICH MUST BE CORRECTED.

THE STATE DEPARTMENT AND THE IMMIGRATION AND NATURALIZATION SERVICE REPORT THAT TODAY'S IMMIGRATION SYSTEM ADVERSELY AFFECTS 36 COUNTRIES, INCLUDING: ARGENTINA, GERMANY, INDONESIA, IRELAND, ITALY, JAPAN, POLAND, AND TUNISIA.

IT IS SIMPLY NOT FAIR TO PENALIZE SO MANY COUNTRIES. IT IS NOT IN OUR OWN SELF-INTEREST. BY CLOSING THE DOORS OF CITIZENSHIP TO THE PEOPLE OF SO MANY NATIONS, WE ARE DEPRIVING OURSELVES OF THEIR GREAT TALENTS, SKILLS, AND ENERGY.

S. 1611 WOULD CHANGE ALL THAT, TO THE BENEFIT OF EVERYONE, BY CREATING AN ADDITIONAL 50,000 ANNUAL VISAS, AND ASSIGNING THE NEW VISAS ON A NEW BASIS. IT GIVES APPLICANTS CREDIT FOR THEIR EDUCATION, SKILLS, AND CITIZENSHIP IN ADVERSELY AFFECTED COUNTRIES.

THAT IS A FAIR APPROACH, IT IS ONE THAT SERVES OUR NATIONAL INTEREST, AND I PLEDGE TO YOU MY FULL SUPPORT IN SECURING THE PASSAGE OF THIS BILL IN THE SENATE, AND ITS ENACTMENT INTO LAW.

MR. CHAIRMAN, ONE OF MY CONSTITUENTS, MR. JAMES HALLISEY, HAS CONTACTED ME ABOUT A RELATED MATTER, AND I WOULD APPRECIATE IT IF HIS PROPOSAL COULD BE SUBMITTED TO TODAY'S WITNESSES FOR COMMENT FOR THE RECORD.

MR. HALLISEY, WHO IS AN ATTORNEY AND A STUDENT OF IMMIGRATION ISSUES, IS CONCERNED ABOUT THE MANY PEOPLE WHO FALL INTO A KIND OF LEGAL LIMBO.

YOUR BILL ADDRESSES THOSE WHO SEEK TO ENTER THE UNITED STATES STARTING NEXT YEAR. LAST YEAR'S IMMIGRATION BILL PROVIDES AMNESTY FOR THOSE ENTERING PRIOR TO JANUARY 1, 1982. BUT WHAT ABOUT THOSE IN THE UNITED STATES ILLEGALLY, WHO HAVE ARRIVED HERE SINCE JANUARY 1, 1982?

THE IMMIGRATION AND NATURALIZATION SERVICE HAS ESTIMATED THAT 3.5 MILLION PEOPLE WILL COME FORWARD TO SEEK AMNESTY. IT NOW APPEARS THAT ONLY 1.5 MILLION MAY APPLY BY THE MAY 1988 DEADLINE, LEAVING 2 MILLION EXPECTED AMNESTY SLOTS UNFILLED.

MR. HALLISEY SUGGESTS MAKING THOSE SLOTS AVAILABLE TO THE ILLEGAL ALIENS WHO ARRIVED HERE SINCE JANUARY 1, 1982. HE FURTHER RECOMMENDS MAKING HALF OF ANY NEW AMNESTY POSITIONS AVAILABLE TO PEOPLE FROM THE 36 ADVERSELY AFFECTED COUNTRIES, ON THE BASIS OF THE POINT SYSTEM CREATED BY S. 1611, AND THE OTHER HALF AVAILABLE TO PEOPLE FROM ALL OTHER COUNTRIES. I WOULD VERY MUCH APPRECIATE THE COMMENTS OF TODAY'S WITNESSES ON THIS PROPOSAL.

AFTER CONSULTATION BETWEEN OUR STAFFS AND THE STAFF OF SENATOR SIMPSON, I HAVE ATTACHED THE FOLLOWING QUESTIONS FOR THE RECORD OF THIS HEARING. I HOPE THAT THE ANSWERS TO THESE QUESTIONS WILL HELP US ADDRESS AS DIRECTLY AS POSSIBLE THE INEQUITIES I HAVE TOUCHED UPON IN THIS STATEMENT, AND THAT YOU YOURSELF HAVE SO ELOQUENTLY DISCUSSED. I WOULD BE MOST APPRECIATIVE IF YOU WOULD SUBMIT THESE QUESTIONS ON MY BEHALF TO EACH OF THE WITNESSES AT TODAY'S HEARING. THANK YOU.

ADDITIONAL QUESTIONS SUBMITTED BY SENATOR D'AMATO

1. CAN YOU ESTIMATE HOW MANY ADDITIONAL IMMIGRANTS FROM EACH OF THE COUNTRIES ADVERSELY AFFECTED BY THE 1965 AMENDMENTS MIGHT BE ADMITTED TO THE UNITED STATES IF S. 1611'S POINT SYSTEM FOR NONPREFERENCE VISAS IS ADOPTED?

2. WHAT WOULD BE THE BENEFITS TO THE RESIDENTS OF THESE ADVERSELY AFFECTED COUNTRIES IF RELATIVELY MORE POINTS ARE ASSIGNED TO THE FOLLOWING CATEGORIES:

A. EDUCATION
B. HIGHER EDUCATION
C. ADVERSELY AFFECTED COUNTRY

3. ONE METHOD OF SELECTING THE RECIPIENTS OF THE 50,000 NEW VISAS CREATED BY S. 1611 IS RANDOM COMPUTER SELECTION. CAN YOU RECOMMEND ANY OTHER METHOD, SUCH AS THE SYSTEM EMPLOYED BY THE NP-5 PROGRAM, THAT WOULD BE CONSISTENT WITH THE EQUITABLE GOALS AND NATURE OF THIS LEGISLATION?

4. AGAIN WITH RESPECT TO THE PROPOSED POINT SYSTEM, WHAT ARE THE BENEFITS, ADVERSE EFFECTS, AND OTHER IMPACTS, OF TREATING PERSONS WITH SCORES BETWEEN 100 AND 147 ESSENTIALLY THE SAME AS THOSE WITH SCORES BETWEEN 70 AND 99?

ALFONSE M. D'AMATO
NEW YORK

United States Senate
WASHINGTON, DC 20510

October 23, 1987

The Honorable Edward M. Kennedy
Chairman
Subcommittee on Immigration and Refugee Affairs
Commitee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Ted:

At today's hearing on S. 1611, I discussed with you a proposal brought to my attention by Mr. James Hallisey. As you requested, I am enclosing a written copy of that proposal. It is signed by one of Cardinal O'Connor's key legal advisors, Monsignor James J. Murray, and dated October 1, 1987. I look forward to discussing this matter with you, and I thank you for submitting this proposal to the witnesses at today's hearing for comment.

Sincerely,

Al

Alfonse M. D'Amato
United States Senator

AMD:mhc

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Office of the Executive Director

PROPOSED AMENDMENT TO THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

The Immigration Reform and Control Act of 1986 was signed into law by President Reagan on November 6, 1986. The Act was designed for persons who entered the United States illegally prior to January 1, 1982 and maintained an illegal status up to the date of filing an application for legal status.

The Immigration and Naturalization Service (I.N.S.) estimated 3.5 million "Illegal Aliens" were eligible for legal status under the Act.

Persons eligible could commence filing applications on May 5, 1987. The Act provides that the application period will end on May 4, 1988.

The I.N.S. is surprised how few have come forward to apply for legal status. From all appearances, it is now safe to say that approximately 1.5 million persons will take advantage of the Act, some 2 million short of expectation.

Senator Kennedy (D-Ma) with the support of Senator Moynihan (D-NY) recently introduced a bill entitled "The Immigration Act of 1987", which would increase the total number of immigrant visas from 270,000 to 320,000 annually. Of these, 50,000 would be designated as non-preference immigrant visas, to be alloted based on a point system. The point system would favor those nationalities who were adversely affected by the Immigration Nationality Act of 1965. The proposed bill is designed to favor the Irish, as well as other persons from Western European nations as of the date of enactment. The Kennedy bill would have little, if any, effect on the estimated 120,000 illegal Irish presently residing in the United States (most having arrived after January 1, 1982).

Senator Al D'Amato (R-NY) told us that in his opinion the present Congress will not increase the number of "Illegal Aliens" to legal status for some years to come.

Our proposal is that because some 2 million persons are not coming forth to apply for legal status, we should try to enlist the support of legislators and various organizations, to have the Congress amend the 1986 Act, to allow others (illegals arriving after January 1, 1982) to apply after the deadline of May 4, 1988, and the theory (point system) behind Kennedy's proposed Immigration Act of 1987 be applied to the new applicants, (up to 1 million persons from Ireland and Western Europe under the point system and the remaining one million persons from all other countries). If this were accomplished, all of the estimated 120,000 undocumented Irish persons as well as over 100,000 from the United Kingdom and hundreds of thousands of other undocumented Western European persons would be eligible for legal status.

This amendment would not be asking the Congress to increase the number of "Illegal Aliens" to legal status, because it expected 3.5 million to apply under the 1986 Act and it would also take the inequity out of the Act which limited it to persons who were in the U.S. illegally prior to January 1, 1982.

October 1, 1987

James J. Murray

Rev. Msgr. James J. Murray
Executive Director

Senator **Kennedy**. Congressman Donnelly.

STATEMENT OF CONGRESSMAN BRIAN J. DONNELLY

Mr. **Donnelly**. Mr. Chairman, thank you for holding these hearings this morning and inviting me to testify on the Immigration Act of 1987, legislation introduced in the Senate by the distinguished chairman, in hand with identical legislation I introduced in the House of Representatives.

Mr. Chairman, these immigration reform hearings are a fulfillment of the commitments my colleagues in the House and your Senate colleagues made late in the 99th Congress—to revisit legal immigration policy in the 100th Congress and bring closure to the other half of the Select Commission on Immigration and Refugee Policy recommendations—long neglected recommendations—to reform our legal immigration system.

As the members of this subcommittee are aware, the passage of the landmark Immigration Reform and Control Act of 1986 became a reality after many years of arduous debate and intense lobbying from immigration experts, employer interests and advocates for illegal aliens. However, that legislation dealt with the issue of illegal immigration.

In this public law, there was a tiny provision—section 314—allowing for an additional 10,000 nonpreference visas—5,000 for fiscal year 1987 and 1988—for 36 so-called "adversely affected" countries. Section 314 created an explosion within our present immigration structure, and we witnessed first-hand the imbalances in immigration which have inadvertently developed in recent years.

Section 314 and the furor it created was the end result of an amendment that I offered to the omnibus immigration legislation, to allow for more flexibility in American immigration policy.

My amendment, which passed the House unanimously, took into account not only immigrants who have arrived in recent years as a basis for future generations, but also the historical patterns of immigration—namely, countries that have contributed significantly to our melting pot in past generations.

Unfortunately, my original proposal was whittled down in conference, and the one-time-only provision defined in section 314 was created. Not surprisingly, the so-called NP-5 program produced an outpouring of inquiries from every corner of the globe with well over 1 million written requests for one of the 10,000 nonpreference visas arrived here in Washington.

The requests came from natives of those countries that have experienced a decline in immigration to the United States since the passage of the 1965 reform, especially from older sources of immigration such as Canada, Ireland, Italy, and other nations of Western Europe. The response to the program created a bureaucratic nightmare, but silenced those who believed that there is no great need to reform our current preference category system, which was intended to correct discrimination against many nations of the world.

The goal of the 1965 reform was noble—to end discrimination against immigrants because of their nationality—a principle I would not wish to change. However, one of the unintended effects of the changes made in immigration policy in 1965 and 1978 have conspired to increase the problem of discrimination in some areas and not to eliminate it.

In fact, the Southern and Eastern Europeans who expected to benefit from the 1965 law are now effectively excluded from the immigrant pool on an equal basis with residents of Northern and Western Europe.

The cumulative effect of the policy of the last 20 years has been to discriminate against many of the peoples who have traditionally made up our immigrant stock. You cannot solve the problems of discrimination by eliminating it for some and creating it for others.

Today we have an opportunity to correct these imbalances in immigration and open our doors once again to legal immigration, slammed shut on those nations that enjoy long historic and family ties with our country.

Mr. Chairman, our Legal Immigration Act of 1987 will accomplish these goals without discriminating against the traditional priority we have given to family reunification. In addition, we keep intact the principles of fairness established in the 1965 reforms. The goals we have set forth in the legislation are noteworthy, and the time has come for the Congress to implement the legal immigration recommendations of the Select Commission.

Our legislation is balanced, it protects the principles of family reunification. It deals directly with the heavy backlog of immediate relatives of persons living in the U.S., which in some cases goes back to 1978. The bill establishes a new independent category—50,000 new visas—from older sources of immigration that have built our Nation which succeeding generations of immigrants who have constantly enriched our society with their strong commitment to the ideals of freedom, democracy, and opportunity in their new land.

By correcting imbalances in our current system, we will once again open doors to those who no longer have immediate family ties in the United States and are therefore unable to use the annual ceiling of 20,000 available per country.

The bill's concept of a sunset provision is necessary to provide a guarantee that Congress will revisit this issue again in 5 years and not let any needed reforms or changes fall by the wayside.

Mr. Chairman, our bill enjoys bipartisan support in the House, with more and more of my colleagues cosponsoring each day. We will enlist the guidance of Chairman Rodino of the House Judiciary Committee and Chairman Mazzoli of the House Subcommittee on Immigration. Their many years of experience, in hand with their colleagues in the Senate, under the leadership of yourself and the distinguished Senator from Wyoming, Mr. Simpson, were the driving forces—you were the driving forces—behind the 1986 immigration reform and the incorporation of the Select Commission recommendations into Senate legislation in 1982 and 1983.

I am confident that their knowledge and, Mr. Chairman, the vast reservoir of experience that your years in the Senate have provided, and those of the distinguished chairman of the Senate Judiciary Committee, will add the necessary thrust to enact this legal immigration reform into law.

Formulating immigration policy is a complex, controversial and delicate procedure, as you well know, Mr. Chairman, and Mr. Simpson. However, the issue of legal immigration has to be revisited. Our Nation has prospered because of the infusion of new people with diverse cultures into our society. There is a broad consensus in the Congress that this is a policy that ought to be continued. However, we must work to formulate a level playing field on which all peoples of the world are treated on a fair and equitable basis.

Last year we attempted to solve the problem of illegal immigration. But the reality is that illegal immigration becomes inevitable when legal immigration is impossible.

The job will not be finished until we address the recommendations of the Hesburgh Commission and deal with the problems and inequities in our legal immigration policy.

Mr. Chairman, I would ask that my entire statement be included in the record at this point, and I will be more than happy to answer any questions or listen to any comments the chairman or committee members may have.

Senator KENNEDY Thank you very much. All of the statements will be printed in their entirety.

[Prepared statement follows:]

TESTIMONY OF THE HONORABLE BRIAN DONNELLY

MR CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR HOLDING THIS HEARING TODAY AND INVITING ME TO TESTIFY ON THE IMMIGRATION ACT OF 1987, LEGISLATION INTRODUCED IN THE SENATE BY THE DISTINGUISHED CHAIRMAN, IN HAND WITH IDENTICAL LEGISLATION I INTRODUCED IN THE HOUSE.

MR CHAIRMAN, THESE IMMIGRATION REFORM HEARINGS ARE THE FULFILLMENT OF THE COMMITMENT MY COLLEAGUES IN THE HOUSE AND YOUR SENATE COLLEAGUES MADE LATE IN THE 99TH CONGRESS - TO REVISIT LEGAL IMMIGRATION POLICY IN THE 100TH CONGRESS AND BRING CLOSURE TO THE OTHER HALF OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY RECOMMENDATIONS - LONG NEGLECTED RECOMMENDATIONS TO REFORM OUR LEGAL IMMIGRATION SYSTEM.

AS MEMBERS OF THIS SUBCOMMITTEE ARE AWARE, THE PASSAGE OF THE LANDMARK IMMIGRATION REFORM AND CONTROL ACT OF 1986 BECAME A REALITY AFTER MANY YEARS OF ARDOUS DEBATE AND INTENSE LOBBYING FROM IMMIGRATION EXPERTS, EMPLOYER INTERESTS, AND ADVOCATES FOR ILLEGAL ALIENS. HOWEVER, THAT LEGISLATION DEALT WITH THE ISSUE OF ILLEGAL IMMIGRATION.

IN THIS PUBLIC LAW, THERE IS A TINY PROVISION - SECTION 314 - ALLOWING FOR AN ADDITIONAL TEN THOUSAND NON-PREFERENCE VISAS - 5000 A YEAR FOR FISCAL YEAR 1987 AND 1988 - FOR THIRTY SIX SO-CALLED "ADVERSELY AFFECTED" COUNTRIES. SECTION 314 CREATED AN EXPLOSION WITHIN OUR PRESENT IMMIGRATION STRUCTURE AND WE WITNESSED FIRST-HAND, THE IMBALANCES IN IMMIGRATION WHICH HAVE INADVERTENTLY DEVELOPED IN RECENT YEARS.

SECTION 314 AND THE FUROR IT CREATED, WAS THE END-RESULT OF AN AMENDMENT I OFFERED TO THE OMNIBUS IMMIGRATION LEGISLATION TO ALLOW FOR MORE FLEXIBILITY IN AMERICAN IMMIGRATION POLICY. MY AMENDMENT, WHICH PASSED THE HOUSE UNANIMOUSLY, TOOK INTO ACCOUNT, NOT ONLY IMMIGRANTS WHO HAVE ARRIVED IN RECENT YEARS AS A BASIS FOR FUTURE GENERATIONS, BUT ALSO THE HISTORICAL PATTERNS OF IMMIGRATION, NAMELY COUNTRIES THAT HAD CONTRIBUTED TO OUR MELTING POT IN PAST GENERATIONS AND HAVE MADE SIGNIFICANT CONTRIBUTIONS TO AMERICA.

UNFORTUNATELY, MY ORIGINAL PROPOSAL WAS WHITTLED DOWN IN CONFERENCE AND THE ONE-TIME ONLY PROVISION DEFINED IN SECTION 314 WAS CREATED. NOT SUPRISINGLY, THE SO-CALLED NP-5 PROGRAM PRODUCED AN OUTPOURING OF INQUIRIES FROM EVERY CORNER OF THE GLOBE WITH WELL OVER 1 MILLION WRITTEN REQUESTS FOR ONE OF THE TEN-THOUSAND NON-PREFERENCE VISAS.

THE REQUESTS CAME FROM NATIVES OF THOSE COUNTRIES THAT HAVE EXPERIENCED A DECLINE IN IMMIGRATION TO THE U.S. SINCE THE PASSAGE OF THE 1965 REFORM, ESPECIALLY FROM THE OLDER SOURCES OF IMMIGRATION, SUCH AS CANADA, IRELAND, ITALY AND OTHER NATIONS OF WESTERN EUROPE. THE RESPONSE TO THE PROGRAM CREATED A BUREAUCRATIC NIGHTMARE, BUT SILENCED THOSE WHO BELIEVED THAT THERE IS NOT A GREAT NEED TO REFORM OUR CURRENT PREFERENCE CATAGORY SYSTEM, WHICH IN 1965, WAS INTENDED TO CORRECT DISCRIMINATION AGAINST MANY NATIONS OF THE WORLD.

THE GOAL OF THE 1965 REFORM WAS NOBLE - TO END DISCRIMINATION AGAINST IMMIGRANTS BECAUSE OF THEIR NATIONALITY - A PRINCIPLE I WOULD NOT WISH TO CHANGE. HOWEVER, ONE OF THE UNINTENDED EFFECTS OF THE CHANGES MADE IN IMMIGRATON POLICY IN 1965 AND 1978 HAVE CONSPIRED TO INCREASE THE PROBLEM OF DISCRIMINATION IN SOME AREAS, NOT TO ELIMINATE IT.

IN FACT, THE SOUTHERN AND EASTERN EUROPEANS WHO EXPECTED TO BENEFIT FROM THE 1965 LAW ARE NOW EFFECTIVELY EXCLUDED FROM THE IMMIGRANT POOL ON AN EQUAL BASIS WITH RESIDENTS OF NORTHERN AND WESTERN EUROPE.

THE CUMMULATIVE EFFECT OF THE POLICY OF THE LAST 20 YEARS HAS BEEN TO DISCRIMINATE AGAINST MANY OF THE PEOPLES WHO HAVE TRADITIONALLY MADE-UP OUR IMMIGRANT STOCK. YOU CANNOT SOLVE THE PROBLEMS OF DISCRIMINATION BY ELIMINATING IT FOR SOME AND CREATING IT FOR OTHERS.

TODAY, WE HAVE AN OPPORTUNITY TO CORRECT THESE IMBALANCES IN IMMIGRATION AND OPEN OUR DOOR AGAIN TO LEGAL IMMIGRATION, SLAMMED SHUT ON THOSE NATIONS THAT ENJOY LONG HISTORIC AND FAMILY TIES WITH OUR COUNTRY.

MR. CHAIRMAN, OUR LEGAL IMMIGRATION ACT OF 1987 WILL ACCOMPLISH THESE GOALS WITHOUT DISCRIMINATING AGAINST THE TRADITIONAL PRIORITY WE HAVE GIVEN TO FAMILY REUNIFICATION, IN ADDITION TO KEEPING INTACT THE PRINCIPLES OF FAIRNESS ESTABLISHED IN THE 1965 REFORMS.
THE GOALS WE HAVE SET FORTH IN THE LEGISLATION ARE NOTEWORTHY AND THE TIME HAS COME FOR CONGRESS TO IMPLEMENT THE LEGAL IMMIGRATION RECOMMENDATIONS OF THE SELECT COMMISSION.

OUR LEGISLATION IS BALANCED, IT PROTECTS THE PRINCIPLES OF FAMILY REUNIFICATION. IT DEALS DIRECTLY WITH THE HEAVY BACKLOG OF IMMEDIATE RELATIVES OF PERSONS LIVING IN THE U.S., WHICH IN SOME CASES GOES BACK TO 1978. THE BILL ESTABLISHES A NEW INDEPENDENT CATAGORY - 50,000 NEW VISAS - FROM OLDER SOURCES OF IMMIGRATION THAT HAVE BUILT OUR NATION WITH SUCCEEDING GENERATIONS OF IMMIGRANTS WHO HAVE CONSTANTLY ENRICHED OUR SOCIETY WITH THEIR STRONG COMMITMENT TO THE IDEAS OF FREEDOM, DEMOCRACY, AND OPPORTUNITY IN THEIR NEW LAND.

BY CORRECTING IMBALANCES IN OUR CURRENT SYSTEM, WE WILL ONCE AGAIN OPEN OUR DOORS TO THOSE WHO NO LONGER HAVE IMMEDIATE FAMILY TIES IN THE UNITED STATES AND ARE THEREFORE UNABLE TO USE THE ANNUAL CEILING OF 20,000 AVAILABLE PER COUNTRY.

THE BILL'S CONCEPT OF A SUNSET PROVISION IS NECESSARY TO PROVIDE A GUARANTEE THAT CONGRESS WILL REVISIT THIS ISSUE AGAIN AFTER FIVE YEARS AND NOT LET ANY NEEDED REFORMS OR CHANGES FALL BY THE WAYSIDE.

MR. CHAIRMAN, OUR BILL ENJOYS BI-PARTISAN SUPPORT IN THE HOUSE WITH MORE AND MORE OF MY COLLEAGUES CO-SPONSORING EACH DAY. WE WILL ENLIST THE GUIDANCE OF CHAIRMAN RODINO OF THE HOUSE JUDICIARY COMMITTEE, AND CHAIRMAN MAZZOLI OF THE HOUSE SUBCOMMITTEE ON IMMIGRATION. THEIR MANY YEARS OF EXPERIENCE, IN HAND WITH THEIR COLLEAGUES IN THE SENATE, UNDER THE LEADERSHIP OF YOURSELF AND THE DISTINGUISHED SENATOR FROM WYOMING, MR. SIMPSON, WERE THE DRIVING FORCE BEHIND THE 1986 IMMIGRATION REFORM AND THE INCORPORATION OF THE SELECT COMMISSION RECOMMENDATIONS INTO SENATE LEGISLATION IN 1982 AND 1983.

I AM CONFIDENT THAT THEIR KNOWLEDGE, AND MR CHAIRMAN, THE VAST RESEVOIR OF EXPERIENCE THAT YOUR YEARS IN THE SENATE HAVE PROVIDED, AND THOSE OF THE DISTINGUISHED CHAIRMAN OF THE SENATE JUDICIARY COMMITTEE, WILL ADD THE THRUST NECESSARY TO ENACT THIS LEGAL IMMIGRATION REFORM INTO LAW.

FORMULATING IMMIGRATION POLICY IS A COMPLEX, CONTROVERSIAL AND DELICATE PROCEDURE. HOWEVER, THE ISSUE OF LEGAL IMMIGRATION HAS TO BE REVISITED. OUR NATION HAS PROSPERED BECAUSE OF THE INFUSION OF NEW PEOPLE WITH DIVERSE CULTURES INTO OUR SOCIETY. THERE IS

BROAD CONSENSUS IN CONGRESS THAT THIS POLICY BE CONTINUED. HOWEVER, WE MUST WORK TO FORMULATE A LEVEL PLAYING FIELD ON WHICH ALL PEOPLES OF THE WORLD ARE TREATED ON A FAIR AND EQUITABLE BASIS.

LAST YEAR, WE ATTEMPTED TO SOLVE THE PROBLEM OF ILLEGAL IMMIGRATION. BUT, THE REALITY IS THAT ILLEGAL IMMIGRATION BECOMES INEVITABLE WHEN LEGAL IMMIGRATION IS IMPOSSIBLE. THE JOB WILL NOT BE FINISHED UNTIL WE ADDRESS THE RECOMMENDATIONS OF THE HESBURGH COMMISSION AND DEAL WITH THE PROBLEMS AND INEQUITIES IN OUR LEGAL IMMIGRATION POLICY.

Senator KENNEDY. I think we are off to a very good start. We have strong bipartisan support here in the Senate, strong bipartisan support in the House, and I hope we will be able to get some fast action in both bodies on this legislation.

I have no questions. I recognize the Senator from Wyoming.

Senator SIMPSON. Just one, Mr. Chairman, if I may.

I think it is a good theme you all present. It is called balance, in a sense—a balanced legal immigration system that distributes immigrant visas to the many different countries throughout the world. And I think the chairman and I have surely become quite aware in Senate debate three times, that there is a clear public preference to limit immigration. It flies in the face of what you say, because I say we are underpopulated, and we will need all the people we can have.

But there is a public preference. We have found it in our mail. We have found it in polling, from Roper and Gallup. You ask people if they want to limit illegal immigration—yes; and then you ask do they want to limit legal immigration, and they will also say yes, because they get up into those high figures.

So that is a public preference, not to go up. Obviously, there will be that. But then, recent immigrant groups share with us so often that they believe that our past discriminatory practices—which you so well outline—justify a continued favorable treatment toward them.

So, how do we best resolve the competing pressures which is, say, a general public opposition to increase legal immigration and objections to changing the immigrant mix that come to us from certain immigrant groups?

Senator MOYNIHAN. Mr. Chairman Emeritus——

Senator SIMPSON. Magnificent.

Senator MOYNIHAN [continuing]. I will give you a thought there. As I say, there are no rules here, so what are sort of the equities. There was an event of sorts in 1980 in the census. For the first time ever, the census after two centuries asked people what were their national origins. And it was striking. Eighty-eight percent of persons asked had an answer; about 5 percent did not know, and then 6 percent said American, something like that.

We are, as a people—and I think our scholarship establishes this now—we are very much aware of where we came from, and this memory persists into tenth generation. And those origins make a certain claim on the policy as a whole, and they are the notion that what is here, that people who arrive in the future ought to in some sense reflect those who have arrived in the past. It is sort of a principle of representation. I think it is not larger than that; it does not make any absolute claim, but it can make the claim of fairness—I mean, that there is no discrimination, and there are no invidious distinctions. That would be the point.

Senator SIMPSON. I would be interested in your thoughts, Congressman Donnelly, and I do want to congratulate you for the way you have worked on this. When we came to your provision in conference, I do not think we ever dreamed of the activity there would be in that area, not only by applicants, but by their attorneys.

Well, enough of that. [Laughter.]

Yes, please.

Mr. **Donnelly**. Senator, I would not deny that there is that strain in Americans that in some ways would want to pull up the drawbridge or build a wall, that we are here now; let us keep other folks out.

But I think a stronger strain in American people is the great pride, as Senator Moynihan said, that they take in their heritage, about where they came from, and a great acknowledgement of the benefits that America has received from this great cultural mix that is created in the United States.

So, were the people who preceded us overwhelmed by this strain that said pull up the drawbridge, I suspect that the Donnellys and the D'Amatos and the Moynihans would not be sitting here this morning. They rose above that, and I think in many ways we have to rise above that, at the same time articulating to our constituencies that we benefit from the infusions of new people; it makes America more competitive. And clearly, on economic reasons, I think we can make a very justifiable case in regards to keeping the doors open, in fact, maybe opening them just a little bit wider—maybe not forever, but for a short period of time.

So I think the two strains that run counterproductive, the strongest strain is the pride in our heritage and the acknowledgment that cultural diversity has made America as strong as it is, both economically and in terms of its moral leadership in the world. It is a very difficult balancing act. Nobody knows how to juggle those balls better than the distinguished Senator from Wyoming, because you had such a difficult task in terms of illegal immigration.

I think dealing with the question of legal immigration does not have the great hurdles that you had over the course of the last 5 or 6 years.

Senator **Simpson**. I think that is true. Thank you.

Senator **Kennedy**. I would just mention—go ahead, Senator D'Amato.

Senator **D'Amato**. Well, I was just going to simply say that I think Congressman Donnelly touched on it well. I think that the chairman emeritus—which he will now be known as——

Senator **Kennedy**. I hope he keeps that title, too. [Laughter.]

Senator **D'Amato** [continuing]. Coined by Senator Moynihan; let us understand that for the record. The problem that you and the Congress before dealt with was much more emotional as it related to the question of whether or not we grandfather and give those who came here illegally the opportunity to become legal, become citizens, residents. As it relates to your provision, I think it is about as carefully crafted as you possibly could make it, and would not bring forth that great opposition that the chairman so rightfully and ably pointed out exists in general to increased immigration, whether it be legal or illegal. I do not believe you would have nearly that kind of emotional outburst, because people tend to say we need a system that does recognize those who want to come in and will come in legally and meet various standards in terms of education, in terms of background and job skills, et cetera. And this bill does take those elements into account.

Senator **Simpson**. Thank you.

Senator KENNEDY. I might just say that a big part of the problem that we have faced in terms of the attitudes toward both illegal immigration, and has spilled over, really, to legal immigration, is the fact of major flooding of our borders in the period of the seventies. The Mariel tragedy still burns in the minds of many Americans. And all the pressures that that put on many different parts of the country, and how unprepared we were in dealing with those kinds of problems, I think, put a shock wave into American politics. But I think what we have seen in recent times—we have certainly seen it up in our part of the country—where those who have come from a different background and a different experience have, by any fair measure, made an extraordinary transition and made an extraordinary contribution. I think that the attitude among the American people today is much more openminded in general with regard to immigration. They are obviously, concerned, all of us are, about the illegal aspects of migration that we are facing in many parts of the country, but my own sense is that there is a different attitude, and a different feeling.

I want to thank all of you very much for coming and look forward to working with you.

Senator SIMPSON. Thank you.

Senator KENNEDY. We will welcome now Mayor Ray Flynn of Boston. He represents a city that is especially proud of its immigrant tradition. Even today, Boston continues to welcome immigrants from all over the world. Mayor Flynn has reached out to help them, taking a lead in responding to the needs of immigrant groups of Boston, whatever their origin.

We welcome the Mayor and appreciate his taking the time to come and testify.

I think it is probably safe to say, Mayor, that we probably have more different groups in the Greater Boston area, from more different ethnic, cultural, religious diversity, than many cities in this country. And we know that this has been something that you know about, and you have observed and have reached out to, and we very much welcome your willingness to come down here to our hearing this morning, and we look forward to your comments.

STATEMENT OF HON. RAYMOND L. FLYNN, MAYOR, CITY OF BOSTON, MA

Mayor FLYNN. Thank you, Senator Kennedy and Senator Simpson. Thank you for the invitation to be here today on behalf of the people of the city of Boston. I thank you for the privilege of testifying before the subcommittee and the opportunity to testify on what I believe to be a fundamental American question of fairness.

I would like first of all to recognize and commend the leadership shown by Senator Kennedy through his authorship of Senate bill 1611 to amend the Immigration and Nationality Act; and by U.S. Representative Brian Donnelly through his companion legislation in the House.

I am particularly proud that this effort to correct the inequities of the current law is due to the commitment of two distinguished sons of Massachusetts and Boston. Once again, the Commonwealth and Boston—"the cradle of liberty"—Senator Simpson, as you well know, join together in leading the fight for justice at the national level.

I would like to raise what for me are the truly compelling reasons why it is time for the Congress to amend the country's immigration law.

In the city of Boston and throughout the Commonwealth of Massachusetts, we are very proud of our rich immigrant heritage. But that is also America's heritage. For, as President Kennedy said, "We are a Nation of immigrants."

I believe that statement to be just as true today as it was the day it was made 25 years ago. From the "melting pot" came the values, the ideals, and the energy that the world has come to know as uniquely American.

It is that very diversity that promises a future that is as rich as our past and is manifested by the phrase "E pluribus unum"—from many there is one.

And yet at the same time, the harsh reality is that there are many people to whom the chance to contribute is just plain denied.

Many of those who endure the worst burdens imposed by the current law are from nations who have been contributing to the life of this Nation since its very founding. Thus, I am pleased that the legislation offered by Senator Kennedy would go a long way toward restoring a system of immigration that would again allow greater numbers of individuals from Ireland, Italy, and other European countries to enter the United States. It would allow them permanent residence without adversely impacting the gains made by other nationalities.

The question of immigration reform is more than just a consideration of economic factors, in all due respect. It is a question of the social and moral substance of this great Nation. Are we still the strong, proud people willing to lift the lamp beside the golden door? Or are we to regress to a narrow, closed, and weak society that hangs that hateful sign in the window that Senator Kennedy's parents knew all about, as my parents knew all about—"No Irish need apply." Or, no Italians, or Latins, or Caribbean.

It is my hope that this subcommittee, the full Senate, and the Nation it serves will declare themselves fully in favor of openness, fairness, and compassion.

Accordingly, I come here today as the mayor of the city of Boston to offer my fullest possible support for a balanced effort represented in S. 1611. It points directly at the redressing of the very serious inequities resulting from the present law.

I am an American proud of his roots and Irish heritage. As well, I take pride from the accomplishments of people of Irish background in virtually every walk of American life, at every stage of our Nation's history: The generals, the Presidents, the poets, the soldiers, and the clergymen and women; the heroes and the humble; those who have dedicated their lives to America and those who have died willingly in her defense.

At long last, there is a measure that would provide opportunity as well as hope for a new generation of Irish-born men and women—people who, like those of other nationalities, seek nothing more than a chance for a better life and to participate in our society as taxpaying and law-abiding residents.

But I must also emphasize that I do not see this solely as an Irish issue. One word that I think would summarize this whole debate around this very important legislation would best serve to characterize why I am here today. That word in Irish would be "ceart"; in Italian, as Senator D'Amato would know, it would be "guistizia"; in Spanish, it would be "justica"; in Polish, it is "sprawiedtiwofc"; in Haitian, it would be "justesse." That word that I am talking about is clearly a word as important as any word in our Declaration and our Constitution, and that word is "justice."

It is a word that literally tens of thousands of young people from Ireland and other nations must today live shadow-like existence in our Nation's cities—Boston, New York, Chicago—cities that their family members from previous generations helped to build. It is wrong that they must exist from day to day without health insurance or the chance to reach their fullest potential.

It is wrong above all because this is not the American way; and it is equally intolerable for me that many of the victims of the current bad law include thousands from Italy, Haiti, and other countries as well.

I am proud that in the city of Boston we have opened our doors to all immigrant people regardless of their legal status. The people of Boston have assured them access to our health care system and the best possible legal advice from our city government in the efforts of dedicated legal and refugee groups alike.

To date, since the implementation of my administration's effort on behalf of the immigration population on October 1, many people have come forward in search of the services we have been able to provide. But the city of Boston's humanitarian effort in this regard is no substitute for swift action on the part of Congress to correct the inherent unfairness of our immigration laws.

I would like to illustrate with the following examples how unfair the current immigration law actually is.

In 1950, Irish nationals comprised 8 percent of the immigrants legally entering the United States. Since the implementation of the 1965 act, Irish people legally entering the United States have amounted to no more than two-tenths of 1 percent of our total entrants for any given year. How fair is that situation?

In the end, it is our Nation that is the biggest loser when we deny people the chance to be fully law-abiding and productive residents. No immigrant that I know of in Boston from Ireland, Italy, Haiti, or any other country came with the intention of being in violation of our law. Instead, they come in search of a better life for themselves, their families, as others did before them. They came to join America and to participate. We should no longer deny them access.

Our Nation suffers also by the loss of hundreds of millions in tax dollars that would have been paid to our Federal and State governments had these immigrants been legalized.

We lose as well when we deny so many thousands of men and women the chance to reach their fullest potential in the land of the free and the home of the brave. And perhaps even of far greater importance, we lose and they lose, when so many decent and hardworking people are denied the chance to aspire and to attain the one goal that meant so much to our own immigrant ancestors—the chance to become citizens of the United States of America.

Because of the current law, we also deny them the opportunity to serve in the armed forces of the United States in defense of this Republic. I point with personal pride to the fact that Irish-Americans hold the greatest number of Congressional Medals of Honor awarded for valor in conflict reaching back to the Civil War.

I would just like to give you two cases in point this morning of how short-sighted the current immigration law really is.

Thirty-five years ago, a hopeful young man arrived in Boston from County Mayo, Ireland. He toiled in the city of Boston and its neighborhoods, in the mechanical trades, and also served in our armed forces. Today, he heads a corporation based in Massachusetts that operates the largest privately-owned hotel chain in New England, along with several of the highest-quality congregate care facilities for the elderly. I am referring to Tom Flatley.

In another case, the son of Italian immigrants rose from his childhood in Greater Boston to become the Governor of the Commonwealth of Massachusetts, U.S. Secretary of Transportation, and Ambassador to Italy. John Volpe distinguished himself in a long career in public life as one of Massachusetts' most influential leaders.

And yet, if Tom Flatley or John Volpe immigrated to the United States today, the attainment of their dreams would be impossible. Let us ask ourselves how many more potential Tom Flatleys or John Volpes are there today in America, both male and female, not just from Ireland or Italy, but also from Haiti, and many other countries.

Mr. Chairman, isn't now the time at long last to make all the sentiments expressed during last year's Fourth of July's celebration about America's immigrant past a reality for today's immigrant?

I ask today that we come home to what we are, what we are best. We are a great nation. We are a powerful nation. But by allowing greater access to the fruits of our society and greater economic opportunity to the largest number of people possible, we can become an even greater nation. When we deny so many people already here as well as others the chance for a better life and force them into underground lives, we are only short-changing America.

America is much more than a job or an address. It is an ideal. It is the ideal that fueled the movement of people from virtually every culture to our shores and across this continent. Our power and influence is far greater than the sum of our weapons or the amount of our gross national product. Our strength lies in the diversity, the character, and the creativity of our people.

Senators Kennedy and Simpson, I ask you, let us not continue an unfair immigration law to deny our Nation the fullness of its heritage. Let us instead, true to our birthright, provide greater access to all who wish to participate as law-abiding and productive members of our society. Let us call upon the talents and the strengths of these men and women, as we continue to build America, and as we lead this Nation into the 21st century.

By such actions, we truly honor our motto: "From many there is one."

Thank you, Mr. Kennedy and Mr. Simpson. I would just like to add that I am here, as Senator Kennedy stated in his opening comment, representing a city that probably has the strongest diversity of people of any city in America. That is our strength. We also have the lowest unemployment rate in America of any major city. We also have one of the strongest economies of any State in this country.

And I want to remind everybody—to you and to your colleagues—that what made Massachusetts and Boston great, the people who came here and built those two great institutions, Boston and Massachusetts—who are they? They are the Spanish, they are the Irish, they are the Italians, they are the Haitians, they are the Asians. Those are the people who made our city, State and economy great.

Thank you very much.

[Prepared statement follows:]

CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
RAYMOND L. FLYNN

REMARKS OF MAYOR RAYMOND L. FLYNN

BEFORE U.S. SENATE JUDICIARY COMMITTEE'S SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS

OCTOBER 23, 1987

SENATOR KENNEDY, DISTINGUISHED MEMBERS OF THE COMMITTEE:

ON BEHALF OF ALL THE PEOPLE OF THE CITY OF BOSTON, I THANK YOU FOR THE PRIVILEGE OF TESTIFYING TODAY BEFORE THE SUBCOMMITTEE, AND FOR THE OPPORTUNITY TO TESTIFY ON WHAT I BELIEVE TO BE A FUNDAMENTAL QUESTION OF FAIRNESS.

I WOULD LIKE, FIRST OF ALL, TO RECOGNIZE AND COMMEND THE LEADERSHIP SHOWN BY SENATOR KENNEDY THROUGH HIS AUTHORSHIP OF SENATE BILL 1611 TO AMEND THE IMMIGRATION AND NATIONALITY ACT; AND BY U.S. REPRESENTATIVE BRIAN DONNELLY THROUGH HIS COMPANION LEGISLATION IN THE HOUSE. I AM PARTICULARLY PROUD THAT THIS EFFORT TO CORRECT THE INEQUITIES OF THE CURRENT LAW IS DUE TO THE COMMITMENT OF TWO DISTINGUISHED SONS OF MASSACHUSETTS AND BOSTON. ONCE AGAIN THE COMMONWEALTH AND BOSTON -- "THE CRADLE OF LIBERTY" -- JOIN TOGETHER IN LEADING THE FIGHT FOR JUSTICE AT THE NATIONAL LEVEL.

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I WOULD LIKE TO RAISE WHAT, FOR ME, ARE THE TRULY COMPELLING REASONS WHY IT IS TIME FOR THE CONGRESS TO AMEND THE COUNTRY'S IMMIGRATION LAW.

IN THE CITY OF BOSTON AND THROUGHOUT THE COMMONWEALTH OF MASSACHUSETTS, WE ARE PROUD OF OUR RICH IMMIGRANT HERITAGE. BUT THAT IS ALSO AMERICA'S HERITAGE. FOR AS PRESIDENT KENNEDY SAID, "WE ARE A NATION OF IMMIGRANTS." I BELIEVE THAT STATEMENT TO BE JUST AS TRUE TODAY AS THE DAY IT WAS MADE OVER 25 YEARS AGO. FROM THE MELTING POT COME THE VALUES, THE IDEALS, AND THE ENERGY THAT THE WORLD HAS COME TO KNOW AS UNIQUELY AMERICAN.

IT IS THAT VERY DIVERSITY THAT PROMISES A FUTURE THAT IS AS RICH AS OUR PAST AND IS MANIFESTED BY THE PHRASE "E PLURIBUS UNUM" - FROM MANY THERE IS ONE.

AND YET AT THE SAME TIME, THE HARSH REALITY IS THAT THERE ARE MANY PEOPLE LIVING IN THIS COUNTRY TODAY, MANY MORE WHO DESIRE TO COME TO OUR SHORES, TO WHOM THE CHANCE TO CONTRIBUTE IS DENIED.

MANY OF THOSE WHO ENDURE THE WORST BURDENS IMPOSED BY THE CURRENT LAW ARE FROM NATIONS WHO HAVE BEEN CONTRIBUTING TO THE LIFE OF THIS NATION SINCE ITS VERY FOUNDING. THUS, I AM PLEASED THAT THE LEGISLATION OFFERED BY SENATOR KENNEDY WOULD GO A LONG WAY TOWARD RESTORING A SYSTEM OF IMMIGRATION THAT WOULD AGAIN ALLOW GREATER NUMBERS OF INDIVIDUALS FROM IRELAND, ITALY, AND OTHER EUROPEAN COUNTRIES TO ENTER THE U.S. IT WOULD ALLOW THEM PERMANENT RESIDENCE WITHOUT ADVERSELY IMPACTING THE GAINS MADE BY OTHER NATIONALITIES.

MR. CHAIRMAN, THE QUESTION OF IMMIGRATION REFORM IS MORE THAN JUST A CONSIDERATION OF ECONOMIC FACTORS. IT IS A QUESTION OF THE SOCIAL AND MORAL SUBSTANCE OF THE NATION. ARE WE STILL THE STRONG, PROUD PEOPLE WILLING TO LIFT THE LAMP BESIDE THE GOLDEN DOOR? OR ARE WE TO REGRESS TO A NARROW, CLOSED, AND WEAK SOCIETY THAT AGAIN HANGS THAT HATEFUL SIGN IN THE WINDOW, "NO IRISH NEED APPLY." OR NO ITALIANS, OR NO LATINS, OR NO CARIBBEANS?

IT IS MY HOPE THAT THIS SUBCOMMITTEE, THE FULL SENATE, AND THE NATION IT SERVES WILL DECLARE THEMSELVES CLEARLY IN FAVOR OF OPENNESS, FAIRNESS, AND COMPASSION. ACCORDINGLY, I COME HERE TODAY AS THE MAYOR OF THE CITY OF BOSTON TO OFFER MY FULLEST POSSIBLE SUPPORT FOR THE BALANCED EFFORT REPRESENTED IN S. 1611. IT POINTS DIRECTLY AT REDRESSING THE VERY SERIOUS INEQUITIES RESULTING FROM THE PRESENT LAW.

I AM AN AMERICAN PROUD OF HIS ROOTS AND IRISH HERITAGE. AS WELL, I TAKE PRIDE FROM THE ACCOMPLISHMENTS OF PEOPLE OF IRISH BACKGROUND IN VIRTUALLY EVERY WALK OF AMERICAN LIFE AT EVERY STAGE OF OUR NATION'S HISTORY. THE GENERALS, THE PRESIDENTS, THE POETS, THE SOLDIERS, AND THE CLERGYMEN AND WOMEN. THE HEROES AND THE HUMBLE, THOSE WHO HAVE DEDICATED THEIR LIVES TO AMERICA AND THOSE WHO HAVE DIED WILLINGLY IN HER DEFENSE. AT LONG LAST THERE IS A MEASURE THAT WOULD PROVIDE OPPORTUNITY -- AS WELL AS HOPE -- FOR A NEW GENERATION OF IRISH-BORN MEN AND WOMEN. PEOPLE WHO, LIKE THOSE OF ALL OTHER NATIONALITIES, SEEK NOTHING MORE THAN A CHANCE FOR A BETTER LIFE AND TO PARTICIPATE IN OUR SOCIETY AS TAX-PAYING AND LAW ABIDING RESIDENTS.

BUT I MUST ALSO EMPHASIZE THAT I DO NOT SEE THIS SOLELY AS AN IRISH ISSUE. ONE WORD, AND ONE WORD ALONE SERVES BEST TO CHARACTERIZE WHY I AM HERE TODAY. IN THE IRISH LANGUAGE THE WORD IS "CEART", IN ITALIAN THE WORD IS "GUISTIZIA", IN SPANISH THE WORD IS "JUSTICA", IN POLISH THE WORD IS "SPRAWIEDTIWOFC" AND TO MY FRIENDS FROM HAITI THE WORD IS "JUSTESSE".

I AM HERE ON BEHALF OF THE PEOPLE, FROM ALL THESE CULTURES WHO MAKE UP THE UNITED STATES, TO ASK FOR "JUSTICE".

IT IS WRONG THAT LITERALLY TENS OF THOUSANDS OF YOUNG PEOPLE FROM IRELAND AND OTHER NATIONS MUST TODAY LIVE SHADOW-LIKE EXISTENCES IN OUR NATION'S LARGEST CITIES -- CITIES THAT THEIR FAMILY MEMBERS FROM PREVIOUS GENERATIONS HELPED TO BUILD. IT IS WRONG THAT THEY MUST EXIST ONLY FROM DAY TO DAY WITHOUT ACCESS TO HEALTH INSURANCE OR THE CHANCE TO RISE TO THEIR FULLEST POTENTIAL BY UTILIZING THE FIRST-RATE EDUCATIONS THEY RECEIVED IN IRELAND. IT IS WRONG ABOVE ALL BECAUSE THIS IS NOT THE AMERICAN WAY, AND IT IS EQUALLY INTOLERABLE FOR ME THAT MANY OF THE VICTIMS OF THE CURRENT BAD LAW INCLUDE THOUSANDS FROM ITALY, HAITI, AND OTHER COUNTRIES AS WELL.

I AM PROUD THAT IN THE CITY OF BOSTON WE HAVE OPENED OUR DOORS TO ALL IMMIGRANT PEOPLE REGARDLESS OF THEIR LEGAL STATUS. THE PEOPLE OF BOSTON HAVE ASSURED THEM ACCESS TO OUR HEALTH CARE SYSTEM AND THE BEST POSSIBLE LEGAL ADVICE FROM OUR CITY GOVERNMENT AND THE EFFORTS OF DEDICATED LEGAL AND REFUGEE GROUPS ALIKE.

TO DATE, SINCE THE IMPLEMENTATION OF MY ADMINISTRATION'S EFFORTS ON BEHALF OF ITS IMMIGRANT POPULATION ON OCTOBER 1, MANY PEOPLE HAVE COME FORWARD IN SEARCH OF THE SERVICES WE HAVE BEEN ABLE TO PROVIDE. BUT THE CITY OF BOSTON'S HUMANITARIAN EFFORT IN THIS REGARD IS NO SUBSTITUTE FOR SWIFT ACTION ON THE PART OF CONGRESS TO CORRECT THE INHERENT UNFAIRNESS OF OUR IMMIGRATION LAWS.

I WOULD LIKE TO ILLUSTRATE, WITH THE FOLLOWING EXAMPLES, HOW UNFAIR THE CURRENT IMMIGRATION LAW ACTUALLY IS.

IN 1950, IRISH NATIONALS COMPRISED 8% OF THE IMMIGRANTS LEGALLY ENTERING THE U.S. FOR EACH OF THE PREVIOUS 21 YEARS. SINCE THE IMPLEMENTATION OF THE 1965 ACT, IRISH NATIONALS LEGALLY ENTERING THE U.S. HAVE AMOUNTED TO NO MORE THAN TWO TENTHS OF A PERCENT OF OUR TOTAL ENTRANTS FOR ANY GIVEN YEAR. HOW IS THAT SITUATION FAIR?

IN THE END, IT IS OUR NATION THAT IS THE BIGGEST LOSER WHEN WE DENY PEOPLE THE CHANCE TO BE FULLY LAW-ABIDING AND PRODUCTIVE RESIDENTS. NO IMMIGRANT THAT I KNOW OF IN BOSTON, FROM IRELAND, ITALY, HAITI, OR ANY OTHER COUNTRY CAME WITH THE INTENTION OF BEING IN VIOLATION OF OUR LAW. INSTEAD, THEY CAME IN SEARCH OF A BETTER LIFE FOR THEMSELVES AND THEIR FAMILIES AS OTHERS DID BEFORE THEM. THEY CAME TO JOIN AMERICA AND TO PARTICIPATE. WE SHOULD NO LONGER DENY THEM ACCESS.

OUR NATION SUFFERS AS WELL BY THE LOSS OF LITERALLY HUNDREDS OF MILLIONS IN TAX DOLLARS THAT WOULD HAVE BEEN PAID TO OUR FEDERAL AND STATE GOVERNMENTS HAD THESE IMMIGRANTS BEEN LEGALIZED.

WE LOSE, AS WELL, WHEN WE DENY SO MANY THOUSANDS OF MEN AND WOMEN THE CHANCE TO REACH THEIR FULLEST POTENTIAL IN THE LAND OF THE FREE AND THE HOME OF THE BRAVE. AND PERHAPS EVEN OF FAR GREATER IMPORTANCE, WE LOSE AND THEY LOSE, WHEN SO MANY DECENT AND HARD-WORKING PEOPLE ARE DENIED THE CHANCE TO ASPIRE TO AND ATTAIN THE ONE GOAL THAT MEANT SO MUCH TO OUR OWN IMMIGRANT ANCESTORS: THE CHANCE TO BECOME CITIZENS OF THE UNITED STATES.

BECAUSE OF THE CURRENT LAW, WE ALSO DENY THEM THE OPPORTUNITY TO SERVE IN THE ARMED FORCES OF THE UNITED STATES IN DEFENSE OF THIS REPUBLIC. I POINT WITH PERSONAL PRIDE TO THE FACT THAT IRISH-AMERICANS HOLD THE GREATEST NUMBER OF CONGRESSIONAL MEDALS OF HONOR, AWARDED FOR VALOR IN CONFLICTS REACHING BACK TO THE CIVIL WAR.

I WOULD LIKE TO GIVE YOU JUST TWO CASES IN POINT THIS MORNING OF HOW SHORT-SIGHTED THE CURRENT IMMIGRATION LAW REALLY IS.

THIRTY-FIVE YEARS AGO, A HOPEFUL YOUNG MAN ARRIVED IN BOSTON FROM COUNTY MAYO, IRELAND. HE TOILED IN THE CITY OF BOSTON AND ITS NEIGHBORHOODS IN THE MECHANICAL TRADES AND ALSO SERVED IN OUR ARMED FORCES. TODAY HE HEADS A CORPORATION BASED IN MASSACHUSETTS THAT OPERATES THE LARGEST PRIVATELY-OWNED HOTEL CHAIN IN NEW ENGLAND, ALONG WITH SEVERAL OF THE HIGHEST-QUALITY CONGREGATE CARE FACILITIES FOR THE ELDERLY. IN ALL THIS THE COMBINED TAXES PAID OUT TO THE STATE AND FEDERAL GOVERNMENTS BY THIS IMMIGRANT FROM IRELAND, TOM FLATLEY, AND HIS EMPLOYEES, AMOUNTED TO $28 MILLION.

IN ANOTHER CASE, THE SON OF ITALIAN IMMIGRANTS ROSE FROM HIS CHILDHOOD IN GREATER BOSTON TO BECOME GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS, U.S. SECRETARY OF TRANSPORTATION, AND AMBASSADOR TO ITALY. JOHN VOLPE DISTINGUISHED HIMSELF IN A LONG CAREER IN PUBLIC LIFE AS ONE OF MASSACHUSETTS' MOST INFLUENTIAL LEADERS.

AND YET IF TOM FLATLEY OR JOHN VOLPE IMMIGRATED TO THE UNITED STATES TODAY, THE ATTAINMENT OF THEIR DREAMS WOULD BE IMPOSSIBLE. THEY WOULD NOT BE LEGAL RESIDENTS AND THEY WOULD NOT BE ALLOWED TO BECOME CITIZENS.

LET US ASK OURSELVES: HOW MANY MORE POTENTIAL TOM FLATLEYS AND JOHN VOLPES ARE THERE TODAY IN AMERICA, BOTH MALE AND FEMALE, NOT JUST FROM IRELAND OR ITALY BUT ALSO FROM HAITI, AND MANY OTHER COUNTRIES?

MR. CHAIRMAN, ISN'T NOW THE TIME, AT LONG LAST, TO MAKE ALL THE SENTIMENTS EXPRESSED DURING LAST YEAR'S FOURTH OF JULY CELEBRATIONS -- ABOUT AMERICA'S IMMIGRANT PAST -- A REALITY FOR TODAY'S IMMIGRANT?

I ASK TODAY THAT WE COME HOME TO WHAT WE ARE WHEN WE ARE AT OUR BEST. WE ARE A GREAT NATION. WE ARE A POWERFUL NATION. BUT BY ALLOWING GREATER ACCESS TO THE FRUITS OF OUR SOCIETY AND GREATER ECONOMIC OPPORTUNITY TO THE LARGEST NUMBER OF PEOPLE POSSIBLE WE CAN BECOME AN EVEN GREATER NATION. WHEN WE DENY SO MANY PEOPLE ALREADY HERE AS WELL AS OTHERS WHO SEEK TO COME TO OUR SHORES THE CHANCE FOR A BETTER LIFE, AND FORCE THEM INTO UNDERGROUND LIVES WE ARE ONLY SHORT-CHANGING AMERICA.

AMERICA IS MUCH MORE THAN A JOB OR AN ADDRESS THAT WE CALL HOME. IT IS AN IDEAL. IT IS THE IDEAL THAT FUELED THE MOVEMENT OF PEOPLE FROM VIRTUALLY EVERY CULTURE TO OUR SHORES AND ACROSS THIS CONTINENT. OUR POWER AND INFLUENCE IS FAR GREATER THAN THE SUM OF OUR ARMAMENTS, OR THE AMOUNT OF OUR GROSS NATIONAL PRODUCT. OUR STRENGTH LIES IN THE DIVERSITY, THE CHARACTER, AND THE CREATIVITY OF OUR PEOPLE.

SENATORS, I ASK YOU, LET US NOT CONTINUE, BY THE PERPETUATION OF AN UNFAIR IMMIGRATION LAW, TO DENY OUR NATION THE FULLNESS OF ITS HERITAGE.

LET US INSTEAD, TRUE TO OUR BIRTHRIGHT, PROVIDE GREATER ACCESS TO ALL WHO WISH TO PARTICIPATE AS LAW ABIDING AND PRODUCTIVE MEMBERS OF OUR SOCIETY. LET US CALL UPON THE TALENTS AND THE STRENGTHS OF THESE MEN AND WOMEN, AS WE CONTINUE TO BUILD AMERICA, AND AS WE LEAD THIS NATION INTO THE 21ST CENTURY.

BY SUCH ACTIONS, WE CAN TRULY HONOR OUR MOTTO: "FROM MANY THERE IS ONE."

Senator **Kennedy**. Thank you very much, Mayor Flynn.

It is always good to hear you and have you here.

Mayor **Flynn**. Thank you.

Senator **Kennedy**. Let me just ask you, of the groups that have been coming into Boston now, what is really the record of the city in terms of assimilation and in terms of their fitting into the education, culture, business, economic, social life?

Mayor **Flynn**. I am proud to represent a city with an unemployment rate of about 2.9 percent; a State that has also a very low unemployment rate.

For example, let us talk about the Irish population coming into our city. Ireland is probably one of the most enlightened, educated countries in the world. They come to Boston, and we have a strong high-tech area; we have strong service management, financial management. Irish people are able to integrate economically right into the work force and produce and deliver.

It is unfortunate that a lot of their abilities are being stifled, stymied, because of their doubtful status or their legal status as residents and as citizens.

They could contribute, they could even further expand our great culture and tradition in Boston. And it is interesting, because it is the Irish, the Italian, the Polish, the Lithuanians—those are the people who really built the great city, and they continue to contribute. Let us make what they are doing legal. Let us give them the dignity of that pride that they can say that they are residents and citizens of the United States. They have an awful lot to contribute. We need them; let us take advantage of their energies and their skills.

Senator **Kennedy**. Thank you.

Senator Simpson.

Senator **Simpson**. Mayor Flynn, it is nice to have you here, sir.

Mayor **Flynn**. Thank you.

Senator **Simpson**. I want to tell you about a Western influence that we have left out there, in an historic courtyard at the North Church. That statue there was done by a man named Cyrus Dowland, from Utah, and it was the famed equestrian status of Paul Revere. So I just want to say that we have lent our Western influence there in that historic city.

Mayor **Flynn**. Well, the last time I was here, Senator, you told me the very same story. [Laughter.]

Senator **Simpson**. Well, I thought perhaps I had, yes.

Senator **Kennedy**. I had not heard it, Senator, so——

Senator **Simpson**. It is a dazzler, isn't it? Well, thank you, Mayor. And I guess you heard my question posed to our congressional colleagues, in essence, would you say that it is odd, as you read the Roper poll or the Gallup poll, and see this figure of 84 percent who have said we should reduce legal immigration, but in the same series of questions they will say, well, if they are like my neighbor the Keyes, or the Singhs, or the Clarks, we should indeed have more of them. So it is the same thing. They like the people that come here and the people you described so beautifully.

But how, in your mind, can you share with us, do we reach the balance? How do we resolve the competing pressures of what is apparent as a general public resistance to increased—do not ask me what the figure is; we do not know, and we will be working with that—increased legal immigration and the objections to changing the immigrant mix that come from some immigrant groups in the United States?

Mayor FLYNN. I am not sure I can answer your question all that well, Senator, but I will take a little stab at it. I had a similar conversation with Mayor Koch one afternoon. He was talking about the growing Korean population in New York City and how enterprising they were.

He told me to watch them, he said, because they are terrific workers; they will contribute an awful lot, and observe them. I did, and I saw what he had told me to be reality.

For example, in Dudley Station, the Dudley Square area, in the area of Boston that has been impoverished for such a long period of time, we are trying to develop and trying to bring economic opportunities there. There are new immigrants moving into that community that are building that area and coming in with great skills, working hard, entrepreneurship.

I do not think that message has effectively been communicated to the American public. I cannot talk for Wyoming or many places other than Boston, but I can tell you that when I am out there communicating with the people I represent and telling them the contributions that are being made by various ethnic groups in our city—the Haitian community, the growing Haitian community, from the West Indies—it is revealing and important for long-established people to understand that. And I detect that there is a kind of change in attitude when they hear these kinds of stories.

I do not think we have done a very good job as a society in fully recognizing the contributions being made by immigrants to our country, particularly recently, and what they have done in a lot of major cities. We had decaying cities for some period of time, and now we are starting to see cities in America being built up again. And the people who are really building up those cities are not the people who left the cities and then all of a sudden came back; they are people who are new immigrants who are coming into America, landing in our cities as our fathers and forefathers did before them, and those are the people who are building up the cities and making them stronger.

They bring an enormous work ethic that has to be brought forward. The best producers—Senator Kennedy knows this; he was at a meeting with us. When we pass out the scholarships for our public school children, when we stand in line, giving scholarships to the greatest colleges and universities within the shadows in our city—Harvard, MIT, Boston College, Northeastern—there are Cambodian kids standing in line for those scholarships. They are the high achievers. There are Vietnamese; there are Haitians. It is amazing, it is amazing. They come with an enormous work ethic.

Senator SIMPSON. Mayor, thank you. You have a great pride in your community that you beautifully express. Thank you. It is always nice to see you.

Mayor FLYNN. We have a great pride in our Senator, Senator Kennedy, let me assure you of that. We are very proud of him.

Thank you.

Senator KENNEDY. Thank you very much.

And Mayor, you go out to Rock Springs, Wyo. sometime, and Cheyenne, and you look at that magnificent railroad out there, built by a few people who were from County Mayo and some of the old lands out there; maybe I will take you out there—there may even be a few statues out there, too. [Laughter.]

Mayor, thank you very much.

Mayor **Flynn**. Thank you.

Senator **Kennedy**. The first panel of witnesses represent the administration—Mark Everson, who is Deputy Commissioner of the Immigration and Naturalization Service; Jerome Ogden, Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, Department of State; and Chris Hankin, who is Acting Deputy Under Secretary for International Affairs of the Department of Labor.

Mr. Everson, we will start with you. We want to include all your statements in the record. We are going to have an extremely important vote in the Senate soon, and I know that Members want to get over there in sufficient time to be able to attend the latter part of the debate and discussion on the Bork nomination. So we want to give a fair opportunity to all of our witnesses, and we hope you will make your points briefly; we will include all the statements in the record. If you can limit your remarks to 6 or 7 minutes, we would appreciate it.

Mr. Everson.

STATEMENT OF A PANEL INCLUDING: MARK W. EVERSON, DEPUTY COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE; JEROME C. OGDEN, DEPUTY ASSISTANT SECRETARY FOR VISA SERVICES, BUREAU OF CONSULAR AFFAIRS, DEPARTMENT OF STATE; AND CHRISTOPHER G. HANKIN, ACTING DEPUTY UNDER SECRETARY FOR INTERNATIONAL AFFAIRS, DEPARTMENT OF LABOR

Mr. **Everson**. Certainly. Good morning, Senator Kennedy and Senator Simpson.

It is a pleasure to be here to address the committee on this important starting point in the study and ultimately the reform of our legal immigration system, and it is appropriate to turn to that subject following, as you have said, the landmark effort last year to control our illegal immigration.

The framework for legislative reform of our system of legal immigration must first address the current system and its backlogs of prospective immigrants and how well it is or is not working.

We must also determine the direction in which we wish to take our immigration policy in the future. Certainly, both the work of the Select Commission on Immigration and Refugee Policy and the President's Task Force, which reported in 1981, are important points of reference.

Finally, we need to take into account the impact of programs established under the recent Reform Act—legalization, special agricultural workers, and employer sanctions—on future legal immigration as we seek to reform that system.

It would be unwise to make changes in our legal immigration system without considering the new environment created by IRCA.

As we fine-tune our legal immigration system, we may wish to review levels of illegal immigration to determine whether these flows should be considered in setting levels of legal immigration.

It is now 6 years since the Select Commission issued its report, and further study is necessary to address subsequent events during this interim period. Chief among the additional factors to be considered is the ultimate impact of the major provisions of the 1986 Reform Act on our legal system.

Considerable new demand will be created through the legalization of perhaps some 2 million aliens. We will know more about these probable impacts after the close of the legalization program in May 1988. But the earliest demand is likely to be in the second preference category, beginning in 1989, as temporary residents become permanent resident aliens and petition for their spouses, sons, and daughters.

Since the second preference is already oversubscribed worldwide, the wait for visas in this preference will generally become longer and will likely be devastating for Mexico which, as you know, is the country of origin for the majority of the newly legalized aliens. Currently, visas are being issued to Mexicans who have priority dates 10 years old; for persons petitioning now, the wait to bring a spouse legally from Mexico is likely to run well into the next century, or long after they would, of course, be citizens.

Against this backdrop, the administration offers the following initial comments and concerns regarding this bill. We support in principle the creation of two separate categories within numerically limited immigration—one for family and one for independents.

We concur with the concept that the numerical ceiling should be increased. We note that the proposed legislation does not address means of reducing or clearing the backlog of existing immigrant visa registrants, as was proposed by the Select Commission at a rate of 100,000 additional visas annually for 5 years. We believe that this is an issue worth addressing.

An analysis of the current 2 million registrants would need to be conducted to determine the true number of persons likely to emigrate if such an action were undertaken. Additionally, as stated by the Select Commission, innovative techniques and coordinated planning would be essential to the success of such an endeavor.

The 20,000 uniform per-country ceiling is not addressed in this proposal. Some earlier legislation has proposed higher limits for contiguous or certain other high-demand countries because of their extremely large backlogs. These backlogs are, it is noted, greatest in second and fifth preferences where the scope of those qualifying would be reduced by this bill, and in the case of the second preference, considerably more visa numbers made available.

We note that the Select Commission addressed the second preference family reunification issue and per-country ceilings by exempting second preference visas from counting toward the per-country ceiling.

The bill proposes redefining the current second and fifth preference categories. Second preference would be limited to spouses and minor children, and fifth preference would be limited to unmarried brothers and sisters.

We concur with the more narrow definition of the second preference, and either the elimination of the current fifth preference altogether or, as proposed, its redefinition to limit access only to unmarried siblings. Given the great demand to emigrate to the United States, we believe that more narrow definitions are essential where backlogs are unrealistically long and no great harm is done to the reunification of the nuclear family.

We believe consideration should also be given to the treatment of investors as immigrants. While we believe the concept of a point system deserves further consideration, we have reservations about the point system as proposed. It is likely, in our view, that issued under such a system, independent visas will largely be issued to persons from high-demand countries rather than those countries already alleged to be disadvantaged by the 1965 amendments.

The 1965 amendments ended discrimination in visa issuance and put all countries on an equal footing for immigration purposes. In addressing changes in how immigrant visas should be allocated, care must be taken to retain fairness in that system. To this end, we urge that the method for allocating points within the independent category be consistent with overall national goals.

Studies of how other nations use such a system to allocate points will be helpful in further evaluation.

We are also concerned that the potentially large volume of requests for this category will be administratively cumbersome, given that the result of scoring at least 70 points out of a possible 147 points is not visa issuance, but a chance at random selection, which might be construed as a lottery.

We look forward to working with the committee on these important issues as we move forward toward refining our recommendation on illegal immigrant admission systems and considering those to be submitted by Senator Simpson. Important, of course, will be the experience gained with the Legalization Program, scheduled to close May 4, 1988.

In sum, we believe that Senate bill 1611 provides a starting point for reforming what we believe is a good system, but one that could be made better.

Thank you.

Senator KENNEDY. Thank you very much.

[Prepared statement, along with questions and answers, follow:]

OPENING STATEMENT OF
MARK W. EVERSON, DEPUTY COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

Chairman Kennedy and members of the Subcommittee:

Thank you for the opportunity to appear before you today to comment on S.1611, which would revise the provisions through which numerically limited immigrant visas are allocated under the Immigration and Nationality Act.

We agree that, having dealt with illegal immigration through passage of the Immigration Reform and Control Act of 1986, now is the time to begin the process of studying reform of our legal immigration system. This bill is a starting point on this important process.

The framework for legislative reform of our system of legal immigration must first address the current system and its backlogs of prospective immigrants and how well it is--or is not--working. We must also determine the direction in which we wish to take our immigration policy in the future. Certainly both the work of the Select Commission on Immigration and Refugee Policy and the President's Task Force, which reported in 1981, are important points of reference. Finally, we need to take into account the impact of programs established under the recent Reform Act--legalization, special agricultural workers and employer sanctions--on future legal immigration as we seek to reform that system. It would be unwise to make changes in our legal immigration system without considering the new environment created by IRCA. As we fine tune our legal immigration system, we may wish to review any continued levels of illegal immigration to determine whether these flows should be considered in setting levels of legal immigration.

The current system through which numerically limited immigrant visas are allocated to immigrants was set in place by the 1965 Amendments to the Immigration and Nationality Act with minor amendments made in 1976, 1978, and 1980. These amendments abolished the old national origins quota system and established in their place a more equitable standard now applied on a worldwide basis to prospective immigrants to the United States.

Currently 270,000 visas worldwide may be issued annually to persons qualifying under our system of six preferences, four of which are set aside for the reunification of families and two for the admission of persons whose job skills are needed in this country. Overall, 80 percent of the 270,000 visas are allocated to the relative preferences, with the remaining 20 percent available to needed workers and their immediate families. Certain immediate relatives of U.S. citizens, refugees, and a few additional numerically small groups of immigrants are admitted outside this limit.

Immigration patterns have changed somewhat over our 20-year experience with this system in terms of who is admitted and from which countries. Admissions over the last five years, however, are indicative of our current experience. Overall, from fiscal year 1982 through 1986, 2,870,000 persons were granted immigrant status, an average of 574,000 a year. These figures include immediate relatives of U.S. citizens, averaging 191,000 per year; adjustments of refugees admitted in earlier years, averaging 110,000 per year; other numerically exempt groups, averaging 8,000 per year; as well as those entering under the 270,000 annual numerical limitation.

During the 1982-1986 period, an average of 264,000 immigrants, 98 percent of the limit, were admitted annually under the numerical limitations. Of these, an average of 3 percent (8,000) were first preference unmarried adult sons and daughters of U.S. citizens; 43 percent (114,000) were spouses and unmarried sons and daughters of permanent resident aliens; 7 percent (19,000) were married sons and daughters of U.S. citizens; and 27 percent (71,000) were brothers and sisters of adult U.S. citizens. The two occupational preferences each accounted for 10 percent (26,000 each) of the total.

The annual admission of approximately 270,000 legal permanent residents to the United States falls far below the worldwide demand. Each year tens of thousands of prospective immigrants beyond the numerical limits are petitioned for by relatives in the United States or U.S. employers in need of their skills. There are currently some 2,053,000 prospective immigrants registered at U.S. consular offices abroad who are "in line" to get immigrant visas. This list is rapidly growing. In 1981 when the Select Commission issued its report, only 1.1 million persons were registered for immigrant visas. Of the current 2 million persons waiting, almost two thirds (64 percent) are in the fifth preference as siblings of adult U.S. citizens, their spouses and minor children. Another 18 percent are second preference spouses and unmarried sons and daughters of permanent resident aliens already living in the United States.

The size of the backlog is similarly disproportionate for persons from certain countries. Twelve countries account for over three-quarters of the registrants, with Mexico and the Philippines each accounting for about 19 percent of the total.

This means that while many people have to wait to immigrate to the United States, the wait is much longer for applicants in some preferences and from certain high-demand countries. For most countries in the world--those with low to modest demand to immigrate--first and fourth preference visas (single and married adult sons and daughters of U.S.citizens, respectively) are available without delay.

Visas are currently being issued to spouses and single sons and daughters of permanent resident aliens who petitioned for them about 16 months ago and to siblings of U.S. citizens who petitioned 5-1/2 years ago. U.S. employers are now actually able to hire professionals under the third preference which they requested 7 months ago and other (sixth preference) workers they requested visas for more than 2 years ago.

The wait is far longer for those registrants from high-demand countries such as Mexico, the Philippines, India, Korea, the Peoples Republic of China, the Dominican Republic, and Hong Kong. While U.S. citizens can generally bring adult unmarried sons and daughters almost immediately, visas are being issued to first preference Filipinos who were petitioned for 5-1/2 years ago. Spouses and unmarried sons and daughters from Mexico who have priority dates in November 1977 are only now being issued visas to immigrate. This long delay has been a magnet for illegal immigration.

Similarly, third preference professionals from the Philippines with priority dates in January 1971 are only now immigrating to fill jobs in the United States.

These waits represent only the current visa issuance situation. Because the immigrant visa demand in some preferences and for some countries has grown so rapidly in recent years--and is continuing to do so--waits are getting longer for persons petitioned for today. Consider the current situation for the fifth preference. In 5 years, the worldwide cut-off date for visa issuance has advanced only 1-2/3 years. In January 1982, visas were being issued to persons with February 1980 priority dates. In January 1987, visas were being issued to persons with October 1981 priority dates. During this time persons registered for fifth-preference visas almost doubled from 689,000 to over 1,305,000. Persons applying now cannot reasonably expect to be issued immigrant visas until well into the next century. In the future, as the impacts of legalization and employer sanctions are more fully realized, waits for visa numbers are likely to become longer.

Demographics and the mix between birth rates and immigration must also be considered in reviewing U.S. immigration policy.

As I mentioned earlier, the Select Commission on Immigration and Refugee Policy addressed these same issues in its 1981 report and recommended some relatively modest but far-reaching changes in our immigrant admissions system. The major changes recommended by the Select Commission include:

- Increasing the total for numerically limited immigration to 350,000 per year;

- Making an additional 100,000 visas available for 5 years to clear the backlog of visa registrants;

- Separating numerically limited immigration into two distinct admissions categories--family and independent immigrants;

- Placing greater priority on the reunification of permanent resident aliens living in the United States with their spouses and children by setting aside a larger proportion of visa numbers and by exempting this group from the 20,000 per-country ceiling; and

- Creating a small numerically limited subcategory within the independent category for the immigration of certain investors.

Although the Select Commission did not elect to narrow the definition of persons qualifying under the second and fifth preferences, there was considerable discussion and support among the Commissioners and in testimony given before the Commission for reducing the scope of these very over-subscribed preferences.

It is now 6 years after the Select Commission issued its report, and further study is necessary to address subsequent events during this interim period. For instance, additional factors need to be considered in reforming our legal immigration system. Chief among these factors is the ultimate impact of the major provisions of the 1986 Reform Act on our legal system. First, considerable new demand for family reunification will be created through the legalization of perhaps some 2 million aliens. We will know more about these probable impacts after the close of the legalization program in early May 1988. The earliest demand is likely to be in the current second preference beginning in FY 1989 as temporary residents become permanent resident aliens and petition for their spouses, sons and daughters. Since the second preference is already oversubscribed worldwide, the wait for visas in this preference will generally become longer for Mexico which is the country of origin of the majority of legalized aliens. Currently visas are being issued to Mexicans who have priority dates 10 years old. For persons petitioning now, the wait to bring a spouse legally from Mexico is likely to run well into the next century. We must carefully study trends likely in the future or risk the problem of longer waits.

In the mid-1990's, as legalized aliens begin to naturalize and subsequently to petition for immediate relatives outside the numerical limits and, within the preference system, for married children and siblings, demand and backlogs are likely to increase worldwide in these categories also.

Similarly, demand to bring legal immigrant workers in the occupational preferences in certain labor sectors may well result from implementation of the employer sanctions provisions of the Reform Act, creating further demand and backlogs as we begin to operate within a totally "legal" immigration system. Further, although the Reform Act provides for both replacement agricultural workers and the H-2A agricultural program, we must be prepared to have the flexibility to address potential labor shortages in the future.

Against this backdrop the Administration offers the following initial comments and concerns regarding S.1611:

. We support in principle the creation of two separate categories within numerically limited immigration, one for family and one for independents.

. We concur with the concept that the numerical ceiling should be increased.

. We note that the proposed legislation does not address means of reducing or clearing the backlog of existing immigrant visa registrants as was proposed by the Select Commission at a rate of 100,000 additional visas annually for 5 years. We believe that this is an issue worth addressing. An analysis of the current 2 million registrants would need to be conducted to determine the true number of persons likely to immigrate if such an action were undertaken. Additionally, as stated by the Select Commission, innovative techniques and coordinated planning would be essential to the success of such an endeavor.

. The 20,000 uniform per-country ceiling is not addressed in this proposal. Some earlier legislation has proposed higher limits for contiguous or certain other high-demand countries because of their extremely large backlogs. These backlogs are, it is noted, greatest in second and fifth preferences where the scope of those qualifying would be reduced by this bill, and in the case of the second preference considerably more visa numbers made available. We note that the Select Commission addressed the second preference family reunification issue and per-country ceilings by exempting second preference visas from counting toward the per-country ceiling.

. The bill proposes redefining the current second and fifth preference categories. Second preference would be limited to spouses and minor children, and fifth preference would be limited to unmarried brothers and sisters. We concur with the more narrow definition of the second preference and either the elimination of the current fifth preference altogether or, as proposed, its redefinition to limit access only to unmarried siblings. Given the great demand to immigrate to the United States, we believe that more narrow definitions are essential where backlogs are unrealistically long and no great harm is done to the reunification of the nuclear family.

. We believe consideration should also be given to the treatment of investors.

. While we believe the concept of a point system deserves further consideration, we have reservations about the system proposed. It is likely, in our view, that issued under such a system, independent visas will be issued to persons from high demand countries rather than those countries allegedly "disadvantaged" by the 1965 amendments. The 1965 amendments ended discrimination in visa issuance and put all countries on an equal footing for immigration purposes. In addressing changes in how immigrant visas should be allocated, care must be taken to retain fairness in that system. To this end, we urge that any method for allocating points within an independent category be consistent with overall national goals. Further study of how other nations use such a system to allocate points will be helpful in further evaluation.

We are also concerned that the scoring of the potentially large volume of requests for this category will be administratively cumbersome given that the result of scoring at least 70 points out of 147 possible points is not visa issuance but a chance at random selection which might be construed as a "lottery".

In conclusion, we too see the need for productive steps being taken toward reforming our legal immigrant admissions system. A viable legal system is essential to supplement the provisions of the Immigration Reform and Control Act of 1986 although, with any changes that are made, careful consideration must be given to increased costs. The groups included in the preferences and the numbers of visas available must be credible to help maintain and improve a pattern of legal immigration to this country. Once illegal immigration is halted, legal channels must be open to serve U.S. needs.

We look forward to working with the Committee on these important issues as we move toward refining our own recommendations on the legal immigrant admissions system and considering those to be submitted by Senator Simpson. Important, of course, will be the additional information we obtain from the implementation of the Reform Act, especially that provided by the legalization program which closes May 4, 1988.

In sum, we believe that S. 1611 provides a starting point for reforming what we believe is already a good system but one that can be made better as a result of our joint efforts.

RESPONSES TO QUESTIONS SUBMITTED BY SENATOR SIMON

QUESTION 1.: In your written testimony at page 6, you referred to the Select Commission's recommendation to "create a small numerically limited subcategory within the independent category for the immigration of certain investors." On page 9, you stated that "consideration should also be given to the treatment of investors." What guidelines or criteria would the Service recommend for the allocation of visas for a new investor category? How many would be made available annually? Should there be any preference granted to applicants from adversely affected countries?

ANSWER:

The Department favors creation of a subcategory for immigrant investors because of the significant benefits that such individuals can bring to the American labor market by infusing the market with foreign capital and by providing additional jobs for American workers. In order to ensure that these benefits are realized, the Department recommends that the category be limited to aliens who have invested, or are in the process of investing, a substantial sum of the investor's own funds in an enterprise which is controlled by the investor and which has resulted, or will result, in the creation of a significant number of new jobs for American residents. The minimum investment amount would be set in terms of the value of the dollar at the time of enactment and would be adjusted periodically based on some criteria such as the Consumer Price Index. If Congress were to set aside a relatively small number of visas, perhaps 5,000 visa numbers (with any unused numbers falling down to the next preference category), the anticipated demand would be met. Because of the fraud levels discovered in earlier nonpreference investor applications, the Department favors a tightly controlled and strictly limited investor category. The Service does not favor granting special considerations to natives of the "adversely affected" countries.

QUESTION 2: In 1981, there were approximately 1.1 million immigrant visa registrants. At that time, the Select Commission recommended opening up 500,000 additional visas over a five-year period. Since that time, the number of individuals waiting for visas has increased to 2 million. S. 1611 does not directly address this population. What steps does the Service envision recommending to address this backlog?

ANSWER:

In addressing the backlog, a first step would be to obtain a more accurate assessment of the true size of the backlog. In 1981, when 1.1 million immigrant visa registrants were pending, the estimate of the number who would actually immigrate ran about 500,000 to 600,000. This reduction takes into account persons who are registered under more than one visa category, "insurance" registrants who intend to immigrate only under more adverse circumstances, persons who have already immigrated through other means, and persons who are no longer interested, qualified, or who have died. Using a similar proportion, perhaps 1 million are in the true backlog at this time. Increasing the numerical limit and making some changes in the preference system, including some of those proposed by S.1611, would help reduce the backlog.

A reasonable increase in the number of numerically restricted (i.e., preference and nonpreference) visas may be desirable. However, we do not believe that increasing the number of visas available, in and of itself, will solve the oversubscription problem. Instead, the Department favors limiting the scope of the second and fifth preference categories. Accordingly, second preference should be limited perhaps to the spouses and minor children of permanent residents and fifth preference should be limited perhaps to the unmarried siblings of citizens. These changes would significantly reduce the demand for visa numbers in these categories and would make more visas available for those most in need.

QUESTION 3: How many visas are issued annually based upon the third or sixth preference to individuals from each of the adversely affected countries?

ANSWER:

Please refer to Appendix A which lists the number of third and sixth preference immigrants admitted (which includes adjustment of status cases) for each of the 36 countries during fiscal years 1985 and 1986.

QUESTION 4: The current cutoff date for second preference from Mexico is 1977. For fifth preference it is 1976. For the Philippines the comparable dates are 1981 and 1976. What are the comparable dates for adversely affected countries?

ANSWER:

The cutoff dates for second and fifth preference visa numbers from the "adversely affected" countries are the same as for most of the world (i.e., for all countries except those having a heavy demand). For the month of November 1987 the second preference date is June 22, 1986 and the fifth preference date is February 15, 1982.

QUESTION 5: At page 5 of your written testimony, you state that persons applying now cannot reasonably expect to be issued immigrant visas until well into the next century." What impact will the reduction of fifth preference numbers in S. 1611 have on the wait by current applicants from Mexico, the Philippines, Hong Kong, Korea, India, and China?

ANSWER:

S. 1611 would greatly increase the backlogs for fifth preference for natives of these countries because the numbers available to that category would be substantially reduced. Current registrants might well wait up to half a century to immigrate, with new registrants waiting even longer. We believe that such waits are undesirable. One alternative may be to permit those with previously approved petitions to be brought in through some provision such as that recommended by the Select Commission which called for additional visa numbers to be made available for a few years to clear the backlog.

QUESTION 6: Has the Service studied the impact legalization under the Immigration Reform & Control Act (IRCA) will have on the number of applicants for the family preferences during the rest of this century? If so, what are the conclusions? How would S. 1611 as drafted affect these predictions?

ANSWER:

IRCA would be expected to have relatively little impact on immigration during the rest of this century under the current law. Legalization applicants would not be eligible to petition for spouses or children under the second preference until they become permanent residents which will occur during 1989-91. However, there is currently a wait into the next century of Mexicans to enter under this preference and, based on current information, perhaps three-quarters of the beneficiaries of petitions resulting from legalized aliens could be expected to be from Mexico. Additionally, many applicants for legalization will not petition under the second preference because their spouses were also legalized or because they have married or will marry persons legally in the United States. As we obtain profile information on the legalized population we will be able to refine projections.

Under current law, legalized aliens will be eligible to naturalize and then petition for numerically exempt immediate relatives or first, fourth, or fifth preference relatives beginning in 1994-96, although the more typical timing would be 1997-1999. Given current backlogs in most of these preferences, relatives would not enter until well into the next century. There would be, however, some impact due to petitions for immediate relatives during the very last years of the century. We believe the impact would probably be relatively small, although once we analyze the information on relatives obtained through the legalization process we will be able to make more accurate projections.

In amending the immigrant admissions system to accommodate the impact of legalization, the changes proposed by S. 1611, namely, to increase the overall limit somewhat, to increase the number of visas available for the second preference while reducing the scope of second and fifth preferences, and to eliminate Section 202(e) would diminish backlogs for the second and fifth preferences. An additional possibility would be, as recommended by the Select Commission, to remove second preference from the per-country ceilings and to reduce the size of the per-country ceilings accordingly. Another possibilility would be to increase the per-country ceilings for contiguous countries. Again, as we learn more about the legalized population, we will be able to make more informed suggestions for legislative change.

QUESTION 7: S. 1611 does not alter the 20,000 uniform per-country ceiling. How much will S. 1611 reduce the waiting time for second preference applicants? How much, if at all, will S. 1611 increase the waiting time for the fifth preference applicants.

ANSWER:

While S. 1611 would probably all but eliminate second preference waiting times for all other countries in the world, the demand for second preference immigration from Hong Kong, Mexico and the Philippines is so great that backlogs are likely to remain for a number of years, especially for Mexico, where newly legalized aliens will ultimately result in an increase in the number of second preference petitions being filed.

As mentioned, waiting times for fifth preference could well reach half a century because of the number of current registrants who would remain eligible for visa classification.

QUESTION 8: For each of the adversely affected countries, how many visas have been issued for each of the preferences annually for the past ten years?

ANSWER:

Please refer to the chart contained in Appendix B which gives statistics on new permanent residents (i.e., immigrant visa and adjustment of status cases combined). The Department of State can provide statistics on visa issuances.

QUESTION 9: Does the Service believe that this legislation will in fact cause the admission of those prospective immigrants--educated and skilled individuals without family ties--that it is designed to help?

ANSWER:

Not necessarily. The changes to the eligibility criteria for third preference which limit the category to those with doctoral degrees or possessing exceptional ability will result in many previously-qualified third preference applicants applying for sixth preference numbers. Since sixth preference is already oversubscribed, these individuals are likely to end up competing with the uneducated and unskilled from the "adversely affected" countries for nonpreference numbers. Under S. 1611's nonpreference point system, it must be anticipated that the probability of an educated and skilled individual obtaining a visa would be no greater than the percentage of such people in the general population of applicants.

QUESTION 10: Will the Service, in administering the point system for the independent category under S. 1611, give any preference to applicants who score over 100 points as compared to those who score between 70-99?

ANSWER:

Since the bill allocates visa numbers randomly among all those reaching the 70-point threshold, the government would be precluded from giving preference to those who reach a higher threshold.

QUESTION 11: What would be the affect on the total number of immigrants admitted annually if immediate relatives of permanent residents were exempted from the preference system in the same manner as those of the United States citizens?

ANSWER:

The term "immediate relative" includes the spouse, unmarried minor children and parents of a petitioner, while second preference includes the spouse and unmarried sons and daughters (regardless of age) of a resident alien. Those qualifying for status as the immediate relative of a permanent resident would include the vast majority of second preference applicants and the parents of permanent residents (who now receive no preference status at all).

In recent years approximately 146,000 aliens have qualified for second preference classification annually. (Since 1983 an average of 113,714 aliens have received second preference visas, but the waiting lists have increased by an average of 32,288 cases each year during the same time.) The second preference waiting list is now approaching 400,000 applicants. If immediate relatives of permanent residents were exempt from numerical limits, over 300,000 of these aliens would become eligible for issuance of visas as soon as the law went into effect, with at least an additional 25,000 to 30,000 qualifying annually beyond the number that now receive visas.

The demand for other preference categories, especially fifth, would be reduced, since many residents would petition for parents who would in turn petition for unmarried sons and daughters, rather than waiting to become a citizen in order to petition directly for a sibling.

The Department does not favor enabling permanent residents to petition for immediate relatives. To do so would create a disincentive for naturalization, which would discourage aliens from assimilating into American society. While we should always encourage immigrants to be proud of their old heritage, it is important that they also adopt our American heritage as their own. The naturalization process is much more than a symbolic ceremony indicating the country's willingness to incorporate people from other lands into our national culture. It is the method by which America requires that an alien understand the country's values and ideals and adopt them as his or her own.

Furthermore, the Department feels that the ability to petition for the immigration of one's immediate relatives without regard to quota restriction is a right which has been, and should continue to be, restricted to citizens of this country. It is one of the privileges and obligations which are inherent in citizenship and through which the individual bonds himself, and is bonded to, the nation. According the same benefits to a permanent resident would lessen the value of the privilege and weaken the bond.

QUESTION 12: Many have raised valid concerns about the difficulty Irish, Italian and other immigrants have in fulfilling the requirements of the family preference system. Would the provision in S. 1611 adding a new independent category of 50,000 visas satisfactorily address this problem without giving extra points for the country of origin?

ANSWER:

Since the 1965 amendments abolishing the national origins quota system eliminated the provisions of the prior law which favored certain countries, natives of those countries have been placed on an equal footing with natives of all other countries. This reduction from a preferred status to an equal status resulted in natives of those countries being perceived as "adversely affected". Furthermore, since these countries have relatively high standards of living (compared to the third world countries of Africa, Asia and Latin America), comparatively few of the well-educated and highly-skilled individuals from those countries wish to leave family, friends and familiar surroundings to seek a new life in America as third or sixth preference immigrants. Without such "seed immigrants" to establish the first part of a family in the United States, there is little demand for second preference visas for dependents of the new immigrants or for other preference classifications (first, fourth or fifth) once the seed immigrants naturalize.

By giving extra points to natives of the previously-favored countries, the bill enables those with little education and minimal skills who are unable to obtain labor certifications to compete on an equal footing with the well-educated and highly skilled from the third world. The Service can suggest no other way of accomplishing this objective without giving additional points for country of origin. However, we are not certain that giving points for country of origin will necessarily increase the number of persons from the desired countries under the proposed point system.

RESPONSES TO QUESTIONS SUBMITTED
BY SENATOR SIMPSON

QUESTION 1: How many immediate relatives did we admit in 1976? How many did we admit in the last year for which we have figures? What accounts for the growth in this category, and thus the inherent growth built in to our legal immigration system?

ANSWER:

Please refer to Appendix C for figures on the number of immediate relatives admitted in fiscal years 1976 and 1986.

The United States has long been the most desirable country in the world for immigration purposes. People from all over the world who are dissatisfied with things in their homeland and wish to seek a better life for themselves and their dependents look to this country as the land of opportunity. Because barriers to international travel and communication are being lowered all the time, there is more opportunity for people from other lands to meet and get to know American citizens through study, tourism, business and other avenues. Frequently these contacts result in marriage and immigration. Over the last decade, the number of aliens who have immigrated to the United States based on marriage to a citizen has more than doubled and accounts for 62% of the increase in the immediate relative category. Hopefully, most of these marriages are bona fide, but we know that a significant percentage are not. Although the Service continually strives to improve its ability to detect and combat sham marriages, we are not always successful. The recently enacted Marriage Fraud Amendments Act of 1986 has greatly enhanced our ability to deal with the fraud marriage problem, and will undoubtedly result in even greater success in this area in the future.

The other major immediate relative category which shows a significant increase is that of parents of United States citizens, which almost tripled (from 18,040 to 45,232) during the decade. This increase is most likely attributable to four factors:

1. More aliens are becoming citizens;
2. People around the world are living longer, meaning that naturalized citizens are more likely to have living parents;
3. A larger percentage of immigrants (and therefore of naturalized citizens) are from countries where family ties are close and where living conditions are less desirable than in the United States which increases the desirability of bringing one's parents to this country, and
4. The oversubscription of fifth preference entices some petitioners to file petitions for parents, who, in turn, can sponsor their unmarried sons and daughters under second preference.

QUESTION 2: Do you believe that the immediate relative category will continue to grow at this rate? What will happen to this category when legalized aliens become citizens?

ANSWER:

At this time it is difficult to predict the future rate of growth of the immediate relative category. It is almost a certainty that the number of immediate relatives will continue to increase as large portions of immigrants come from countries with high naturalization rates and close family ties, however. The real impact of the legalization program on the immediate relative category will probably not be seen until early in the next century, since legalized aliens are not likely to naturalize until the mid 1990's based on past trends. As we analyze the characteristics of legalized aliens and their close relatives we will be able to make better predictions on the impact of this population on both numerically limited and unlimited immigration.

Although the immediate relative category will continue to grow, the rate of growth may decrease to some degree due to the passage of the Immigration Marriage Fraud Amendments of 1986. Since an estimated 30% of immigrant visas involve fraudulent marriages, the more effective the Service becomes at combatting such fraud, the more likely it is that the growth rate will level off or even decline. A 33% increase in the Service's fraud detection rate translates into a 10% decline in the number of new immediate relatives. This would also potentially result in fewer second preference visa petitions, since there would be fewer permanent residents filing for a new spouse acquired after the termination of the fraudulent marriage.

QUESTION 3: Is it your experience that the more distant relatives of U. S. citizens -- such as married adult sons and daughters, married and unmarried brothers and sisters -- immigrate to the U. S. and then live with, or close to, the citizen relative?

ANSWER:

Although we are aware of no studies which could be relied upon for such information, it is likely that an immigrant who is following even a more distant relative would settle in the same area. A number of factors would contribute to this, including the likelihood that the citizen relative may be able to provide initial assistance in finding a job, obtaining housing, and otherwise assimilating. Furthermore, this phenomenon is most likely to occur if the naturalized citizen and the distant relative are from cultures which stress the importance of the extended family. There is, of course, no requirement that relatives, other than spouses, live in the same residence or area.

RESPONSES TO QUESTIONS SUBMITTED BY SENATOR D'AMATO

QUESTION 1: Can you estimate how many additional immigrants from each of the countries adversely affected by the 1965 amendments might be admitted to the United States if S. 1611's point system for nonpreference visas is adopted?

ANSWER:

Estimates as to the number of additional immigrants from each country under the new nonpreference category are impossible to predict due to the multiplicity of factors which will affect the distribution.

QUESTION 2: What would be the benefits to the residents of these adversely affected countries if relatively more points are assigned to the following categories:

A. Education
B. Higher education
C. Adversely affected country

ANSWER:

Since natives of the "adversely affected" countries who are well-educated and highly-skilled are able to qualify for visas with relatively little difficulty, increasing the point value given for education and higher education would result in more individuals who are not from the "adversely affected" countries reaching the 70-point threshold. Since there would be more applicants in the general pool, the likelihood of any one individual obtaining a nonpreference visa number would decrease accordingly. Conversely, increasing the points given for birth in one of the "adversely affected" countries would result in more natives of those countries qualifying for the random selection process. While this would increase the probability of a visa number going to such natives in general, it would decrease the likelihood of any one individual obtaining a visa.

QUESTION 3: One method of selecting the recipients of the 50,000 new visas created by S. 1611 is random computer selection. Can you recommend any other method, such as the system employed by the NP-5 program, that would be consistent with the equitable goals and nature of this legislation?

ANSWER:

The method used by the NP-5 program would not be appropriate, since that program involved applicants who qualified at one point in time (between January 21 and 27, 1987), whereas people will be qualifying for the new nonpreference numbers on a continuous basis.

QUESTION 4: Again with respect to the proposed point system, what are the benefits, adverse effects, and other impacts of treating persons with scores between 100 and 147 essentially the same as those with scores between 70 and 99?

ANSWER:

Under the current point allocation system, persons with between 70 and 99 points are likely to be either the uneducated and unskilled from the so-called adversely affected countries or the moderately well-educated and skilled from other countries. In order to score 100 points or more, one would have to be either moderately well-educated, skilled and a native of one of the select countries, or an extremely well-educated and otherwise qualified native of one of the other countries. Since the latter may qualify for a third preference visa, any visas that would be set aside for "100+ pointers" would probably be distributed among a relatively few applicants.

If the two groups were to be treated essentially the same, low-skilled, uneducated aliens from adversely affected countries would have the same probability of being selected for immigration as would educated, highly-skilled immigrants from other countries.

APPENDIX A

THIRD AND SIXTH PREFERENCE ADMISSIONS FOR "ADVERSELY AFFECTED" COUNTRIES FISCAL YEARS 1985-86

	1986		1985	
COUNTRY	3rd Pref	6th Pref	3rd Pref	6th Pref
Albania	0	0	0	1
Algeria	30	6	15	22
Argentina	206	300	168	233
Austria	51	50	57	34
Belgium	203	57	115	64
Bermuda	13	9	6	2
Canada	2118	604	2059	809
Czechoslovakia	41	15	35	21
Denmark	98	37	55	40
Estonia	0	0	0	1
Finland	77	9	46	44
France	534	245	302	221
German Democratic Rep	18	20	15	14
German Federal Rep	538	289	579	290
Gibraltar	0	0	0	0
Great Britain	3192	1193	2870	1428
Guadeloupe	1	3	0	2
Hungary	53	21	59	28
Iceland	13	10	12	3
Indonesia	146	153	111	177
Ireland	319	65	198	58
Italy	195	170	157	211
Japan	575	761	455	898
Latvia	4	1	2	2
Liechtenstein	0	0	0	0
Lithuania	0	7	0	0
Luxembourg	5	2	3	1
Monaco	2	1	0	1
New Caledonia	1	0	2	0
Netherlands	264	134	256	127
Norway	44	16	49	10
Poland	296	305	298	244
San Marino	0	0	0	0
Sweden	287	65	272	107
Switzerland	106	76	139	88
Tunisia	9	6	11	8
TOTAL	9439	4630	8346	5189
WORLDWIDE TOTAL	26,823	26,802	24,905	25,990

APPENDIX B

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IMMIGRANTS ADMITTED BY CLASS OF ADMISSION FROM SELECTED COUNTRIES 1977-1986

COUNTRY	Pref	1986	1985	1984	1983	1982	1981	1980	1979	1978	1977
Albania	1st	1	0	0	0	1	0	0	0	0	0
	2nd	0	0	1	3	1	2	4	2	1	3
	3rd	0	0	0	1	1	0	0	0	0	0
	4th	5	0	0	0	0	0	4	0	2	0
	5th	0	0	0	7	1	1	1	2	9	10
	6th	0	1	0	0	1	1	1	2	2	0
Algeria	1st	0	1	0	2	0	1	0	0	3	0
	2nd	12	18	8	8	15	18	6	9	12	4
	3rd	30	13	21	30	12	17	8	3	2	2
	4th	3	3	0	0	2	0	1	1	2	2
	5th	2	5	6	2	4	13	7	13	12	6
	6th	1	21	10	18	10	14	17	7	10	9
Argentina	1st	28	32	19	17	23	17	22	22	17	4
	2nd	282	253	319	341	417	381	344	553	421	114
	3rd	199	167	206	171	131	113	147	153	89	28
	4th	127	122	106	164	152	110	106	134	97	21
	5th	181	153	234	154	150	434	632	747	716	112
	6th	304	239	322	310	286	296	356	191	137	15
Austria	1st	1	1	1	5	4	3	4	4	5	4
	2nd	16	24	19	24	28	38	14	18	27	25
	3rd	53	62	40	71	51	33	47	24	18	1
	4th	10	7	6	10	3	12	5	9	10	7
	5th	5	10	13	8	10	38	39	29	72	40
	6th	25	36	56	31	21	41	53	67	76	41
Belgium	1st	2	11	0	2	2	4	4	5	2	0
	2nd	45	32	16	25	59	64	11	39	35	35
	3rd	202	119	173	145	136	94	99	44	27	19
	4th	14	9	15	5	14	6	11	9	8	2
	5th	10	11	6	11	11	28	22	27	52	30
	6th	56	70	60	61	42	35	46	71	78	20

IMMIGRANTS ADMITTED BY CLASS OF ADMISSION FROM SELECTED COUNTRIES 1977-1986

COUNTRY	Pref	1986	1985	1984	1983	1982	1981	1980	1979	1978	1977
Bermuda	1st	4	8	5	5	4	1	2	5	1	2
	2nd	16	18	8	29	28	36	18	26	20	27
	3rd	12	4	4	5	11	5	5	6	1	0
	4th	10	11	16	8	0	4	7	19	5	7
	5th	5	5	3	5	1	50	36	49	36	15
	6th	8	2	13	9	8	14	12	14	13	4
Canada	1st	277	272	209	209	162	177	214	173	196	39
	2nd	695	740	667	779	925	1044	845	1225	1106	377
	3rd	2129	2059	2209	2350	2324	1970	2331	1596	783	180
	4th	726	757	570	638	443	412	538	610	492	179
	5th	320	313	357	364	421	1127	1303	1414	1669	422
	6th	608	765	817	1018	851	1330	1917	1983	1540	280
Czechoslovakia	1st	10	8	7	10	7	3	13	6	3	3
	2nd	24	19	25	32	37	38	24	56	52	48
	3rd	42	41	35	44	55	49	56	30	23	13
	4th	14	31	22	10	31	34	17	25	12	18
	5th	9	12	13	16	13	38	49	71	122	61
	6th	14	19	24	23	34	23	64	71	64	39
Denmark	1st	4	11	6	4	1	3	7	1	0	1
	2nd	30	18	20	23	41	43	22	56	23	33
	3rd	98	57	110	92	76	91	77	43	10	7
	4th	9	6	4	6	7	7	13	7	11	8
	5th	8	13	26	5	13	37	35	15	45	47
	6th	37	39	66	55	47	47	87	68	65	42
Estonia	1st	1	0	0	0	0	1	1	0	0	1
	2nd	0	0	0	2	1	1	0	1	1	0
	3rd	0	0	4	2	1	4	1	2	0	0
	4th	0	0	2	3	1	0	0	2	3	0
	5th	0	0	0	0	2	1	1	5	2	1
	6th	0	1	0	4	0	2	0	5	6	0

IMMIGRANTS ADMITTED BY CLASS OF ADMISSION FROM SELECTED COUNTRIES 1977-1986

COUNTRY	Pref	1986	1985	1984	1983	1982	1981	1980	1979	1978	1977
Finland	1st	1	1	0	2	4	0	2	3	3	0
	2nd	16	16	16	18	58	43	31	37	45	29
	3rd	77	46	58	33	70	42	33	10	18	6
	4th	4	7	2	12	10	5	2	2	15	7
	5th	18	11	4	9	15	18	45	46	44	23
	6th	9	44	28	58	32	36	53	52	45	23
France	1st	27	12	21	12	26	18	12	14	25	10
	2nd	159	151	120	149	184	151	98	165	166	137
	3rd	541	307	408	338	312	172	209	73	36	18
	4th	85	68	48	48	56	44	53	27	42	29
	5th	60	73	72	41	51	130	136	145	275	209
	6th	256	228	255	244	142	171	308	287	250	168
German Dem Rep*	1st	4	2	2	2	1	N	N	N	N	N
	2nd	8	4	4	21	17	O	O	O	O	O
	3rd	19	10	7	45	32	D	D	D	D	D
	4th	5	8	4	7	7	A	A	A	A	A
	5th	11	3	1	12	6	T	T	T	T	T
	6th	17	10	3	37	11	A	A	A	A	A
German Fed Rep	1st	32	34	24	29	35	29	25	27	24	29
	2nd	223	234	173	268	308	395	187	312	356	276
	3rd	535	592	678	568	467	402	371	209	126	57
	4th	66	84	87	96	72	67	65	82	77	63
	5th	94	107	138	147	113	303	305	359	503	355
	6th	298	310	357	392	273	347	541	540	530	311
Gibraltar	1st	0	0	0	0	0	0	0	0	0	0
	2nd	0	0	0	5	9	7	4	1	4	2
	3rd	1	0	0	0	0	3	0	0	0	0
	4th	0	0	0	0	1	0	0	0	1	0
	5th	1	0	0	0	1	7	2	7	2	4
	6th	0	0	0	1	0	2	0	1	1	3

* No Separate Data 1977-1981

IMMIGRANTS ADMITTED BY CLASS OF ADMISSION FROM SELECTED COUNTRIES 1977-1986

COUNTRY	Pref	1986	1985	1984	1983	1982	1981	1980	1979	1978	1977
Great Britain & N. Ireland	1st	146	134	131	136	163	91	117	121	93	56
	2nd	872	1021	949	1265	1563	1495	1248	1711	1547	1081
	3rd	3238	2917	3511	3658	3429	2535	2856	1515	849	407
	4th	452	363	373	507	590	482	475	519	509	225
	5th	978	882	1243	903	1068	2154	2229	2178	2973	1993
	6th	1198	1447	1746	2205	1463	2009	3272	3538	2905	1652
Guadaloupe	1st	0	1	1	1	0	1	1	0	0	0
	2nd	10	11	17	18	19	31	13	16	17	10
	3rd	7	0	0	0	0	0	0	0	0	0
	4th	0	1	0	0	0	1	2	1	0	0
	5th	8	0	1	12	5	21	8	11	12	13
	6th	3	2	1	2	10	7	2	0	3	9
Hungary	1st	1	12	5	12	8	6	8	8	15	10
	2nd	34	31	26	35	55	52	47	67	82	71
	3rd	52	63	37	49	36	35	37	20	9	16
	4th	40	20	26	31	33	35	36	30	51	15
	5th	17	15	15	27	47	45	80	126	132	105
	6th	21	31	46	24	22	30	88	52	35	38
Iceland	1st	1	7	0	2	0	0	2	3	0	1
	2nd	8	3	7	12	10	19	12	16	8	13
	3rd	13	11	8	45	9	12	9	0	12	9
	4th	11	12	16	6	4	10	7	0	4	9
	5th	2	0	17	1	0	16	30	12	32	19
	6th	10	3	5	3	6	12	30	33	5	8
Indonesia	1st	6	1	1	4	11	3	0	2	2	2
	2nd	150	170	80	156	255	186	133	130	102	100
	3rd	141	113	132	110	457	85	82	39	28	39
	4th	33	29	14	13	35	26	37	16	6	21
	5th	210	269	229	164	227	209	319	299	257	208
	6th	159	178	150	94	136	71	362	54	33	24

IMMIGRANTS ADMITTED BY CLASS OF ADMISSION FROM SELECTED COUNTRIES 1977-1986

COUNTRY	Pref	1986	1985	1984	1983	1982	1981	1980	1979	1978	1977
Ireland	1st	92	63	30	30	20	21	11	7	13	7
	2nd	33	43	53	59	46	54	38	70	98	71
	3rd	313	180	198	175	145	107	137	72	52	41
	4th	133	48	28	27	27	29	33	13	8	16
	5th	84	100	132	101	62	183	185	242	397	359
	6th	60	53	72	91	63	56	91	123	90	85
Italy	1st	34	25	30	30	40	43	48	36	33	33
	2nd	321	311	287	383	570	685	615	947	1091	1115
	3rd	201	162	163	217	150	154	134	88	36	32
	4th	204	227	233	208	208	228	294	368	369	411
	5th	418	465	519	451	501	1461	1963	2394	3169	3304
	6th	177	215	194	240	324	301	428	360	314	167
Japan	1st	19	9	21	20	22	16	29	19	28	25
	2nd	309	343	281	368	470	545	287	519	512	488
	3rd	574	474	504	441	342	267	290	138	132	83
	4th	25	27	34	31	39	37	31	46	29	20
	5th	303	325	434	350	245	339	509	537	771	590
	6th	757	905	1033	1003	848	758	1060	940	510	406
Latvia	1st	1	1	0	0	0	2	1	0	0	1
	2nd	4	2	1	2	5	4	2	7	8	7
	3rd	4	3	10	1	3	4	9	2	4	1
	4th	3	0	0	3	2	1	2	0	1	1
	5th	0	2	2	0	4	5	13	15	17	20
	6th	1	1	3	4	6	5	6	22	10	3
Liechtenstein	1st	0	0	0	1	0	0	0	0	0	0
	2nd	0	0	0	0	0	0	3	1	1	1
	3rd	0	0	0	1	0	0	0	0	0	0
	4th	0	0	0	0	0	0	0	0	0	0
	5th	0	0	0	0	0	0	2	3	1	0
	6th	0	0	0	1	2	1	0	3	2	2

IMMIGRANTS ADMITTED BY CLASS OF ADMISSION FROM SELECTED COUNTRIES 1977-1986

COUNTRY	Pref	1986	1985	1984	1983	1982	1981	1980	1979	1978	1977
Lithuania	1st	0	0	0	0	0	1	4	1	3	1
	2nd	0	2	2	2	3	2	7	7	5	5
	3rd	0	0	1	6	6	7	2	1	0	2
	4th	11	2	0	1	2	2	2	6	2	3
	5th	0	1	2	1	3	7	14	14	21	13
	6th	7	0	6	4	8	3	2	4	2	5
Luxembourg	1st	0	0	0	1	0	0	0	0	0	0
	2nd	1	0	2	0	0	1	4	4	3	0
	3rd	4	2	1	2	2	3	0	2	0	0
	4th	0	0	0	0	0	1	1	0	0	0
	5th	1	1	3	1	4	2	2	8	4	3
	6th	2	1	0	2	6	3	5	0	1	2
Monaco	1st	1	0	0	0	1	0	0	0	0	0
	2nd	0	1	0	2	7	0	2	6	5	1
	3rd	2	0	0	1	0	1	0	0	2	1
	4th	0	0	0	0	2	0	1	0	1	0
	5th	0	0	0	1	3	2	0	1	3	0
	6th	1	1	1	0	3	2	0	1	3	0
Netherlands	1st	13	11	9	3	4	2	3	4	2	2
	2nd	104	87	103	71	90	88	41	83	67	70
	3rd	283	260	303	280	243	164	206	144	66	22
	4th	19	38	43	23	32	13	16	16	15	18
	5th	51	31	65	37	48	115	131	168	205	178
	6th	140	131	123	164	80	105	197	230	213	86
New Caledonia	1st	0	0	0	0	0	0	1	0	0	1
	2nd	1	0	0	0	0	0	0	0	0	1
	3rd	1	0	0	0	0	0	0	0	0	0
	4th	0	0	0	1	0	0	0	0	0	0
	5th	0	1	1	1	0	1	1	0	0	0
	6th	0	0	0	0	0	0	0	0	0	0

IMMIGRANTS ADMITTED BY CLASS OF ADMISSION FROM SELECTED COUNTRIES 1977-1986

COUNTRY	Pref	1986	1985	1984	1983	1982	1981	1980	1979	1978	1977
Norway	1st	1	9	5	1	2	7	4	4	2	0
	2nd	13	19	6	11	28	25	13	29	37	35
	3rd	44	48	43	66	44	37	51	35	8	4
	4th	11	6	5	9	3	5	6	10	2	13
	5th	6	3	22	16	7	21	31	35	45	36
	6th	16	10	36	34	6	24	54	93	76	39
Poland	1st	77	109	73	57	96	50	65	55	36	36
	2nd	1119	1313	1091	1144	1521	1369	942	1000	1237	980
	3rd	292	296	223	157	124	82	85	56	64	45
	4th	664	623	387	416	760	594	328	321	295	191
	5th	333	327	339	336	769	723	661	782	1083	785
	6th	307	246	199	137	135	142	179	163	205	123
San Marino	1st	1	0	0	0	1	0	0	0	0	0
	2nd	0	0	0	1	1	1	1	0	1	1
	3rd	0	0	0	0	1	0	0	1	0	0
	4th	0	0	0	0	1	1	0	0	0	0
	5th	0	0	0	0	0	1	1	1	1	2
	6th	0	0	0	1	0	1	1	0	1	0
Sweden	1st	11	11	9	7	12	5	6	3	5	5
	2nd	47	43	40	46	63	83	44	97	47	40
	3rd	289	277	240	230	187	193	164	73	37	14
	4th	23	11	10	15	24	19	12	11	12	2
	5th	4	15	16	16	24	48	19	51	54	31
	6th	70	110	82	77	76	80	124	158	131	90
Switzerland	1st	6	6	4	6	2	2	4	2	1	1
	2nd	40	38	29	46	38	52	27	68	52	38
	3rd	108	137	117	120	117	96	122	52	49	21
	4th	19	7	18	15	16	16	9	14	12	7
	5th	7	8	13	12	10	25	49	49	87	79
	6th	79	90	90	116	74	86	98	176	146	86

IMMIGRANTS ADMITTED BY CLASS OF ADMISSION FROM SELECTED COUNTRIES 1977-1986

COUNTRY	Pref	1986	1985	1984	1983	1982	1981	1980	1979	1978	1977
Tunisia	1st	0	0	0	0	0	0	0	0	0	1
	2nd	7	5	11	8	1	7	10	5	4	6
	3rd	12	10	10	7	10	4	0	3	2	2
	4th	2	1	0	0	1	4	0	0	1	0
	5th	7	4	3	5	5	11	2	9	9	15
	6th	6	7	5	15	7	8	18	6	9	1

APPENDIX C

IMMEDIATE RELATIVE ADMISSIONS
FISCAL YEARS 1976 AND 1986-87

	1986	1976	Percent Increase	1987 (3 quarters of the year)	1986 (3 quarters of the year)
Total Immediate Relatives	216,821	102,019	112.5	157,735	160,238
Spouses of U.S. Citizens	131,545	60,090	118.9	95,039	98,146
Children of U.S. Citizens	30,099	17,337	73.6	22,047	21,848
Orphans	9,945	6,552	51.8	7,526	7,272
Parents of U.S. Citizens	45,232	18,040	150.7	33,123	32,972
Spouses, by continent	131,545	60,090	118.9		
Europe	20,509	12,698	61.5		
Asia	35,722	21,326	67.5		
Africa	6,915	1,476	368.5		
Oceania	1,541	843	82.8		
North America	56,122	19,458	188.4		
South America	10,736	4,289	150.3		
Parents, by continent	45,232	18,040	150.7		
Europe	2,909	3,632	-19.9		
Asia	30,199	11,856	154.7		
Africa	650	190	242.1		
Oceania	201	89	125.8		
North America	8,228	1,855	343.6		
South America	3,045	418	628.5		

Senator **Kennedy**. Mr. Ogden.

STATEMENT OF JEROME C. OGDEN

Mr. **Ogden**. Thank you, Mr. Chairman.

I am pleased to appear before you today to present the Department of State's views and comments on S. 1611, which would make major changes in the immigration selection system.

The Department of State agrees with the objective of this bill, which is to develop a new framework for legal immigration that best serves the interests and needs of the American people.

We do, however, have reservations about administering certain provisions of this bill. Our main reservation is the cost.

Of the 50,000 number increase in the worldwide limitation, we estimate that at least 45,000 of them would result in additional visas being issued by consular officers abroad. That is an expense our present budget will not bear. This extra expense would be especially onerous at this time since we do not yet know what will be the future years costs of the Immigration Reform and Control Act of last year. Without that act, immigration outside the numerical limitation will soon match, and by the early 1990's is likely to exceed, immigration within the limitations.

As IRCA creates a large new body of permanent resident aliens and eventually citizens, this trend will increase even more dramatically, at a time that we would not expect to have resources available to expand our visa-issuing capacity without increased appropriations.

Another cost of this bill is administering the newly created Independent-3 category. That is a cost that will fall entirely on the Department of State. By the terms of this bill, anyone is allowed to try to qualify. There is, of course, no way of knowing exactly how many potential applicants will try, but given evidence of the pressures to immigrate to this country, it is unreasonable to assume that there will be hundreds of thousands, if not millions, of people who will submit cases for consular officers to adjudicate.

Each of these candidates would have the right to have their arguments heard, evidence evaluated, doubts resolved, and if necessary, fraud investigated. They may, moreover, keep on trying until they are either successful or exhausted. There are simply no resources to do this without increased appropriations.

Senator **Kennedy**. What is the cost now for an immigrant to be able to come into the country if they qualify?

Mr. **Ogden**. Mr. Chairman, we calculate the cost at $187.50 for the immigrant process. We charge $150 because we estimate that 20 percent of the fee is for the process that is of benefit to the U.S. Government, to screen out the people who have ineligibilities and so on. So we charge 80 percent of the cost recovery method; $125 for the application and $25 for the actual issuance of the visas.

Senator **Kennedy**. Thank you.

Mr. **Ogden**. The point system for the Independent-3 category created by the bill would be difficult to administer for other reasons. Once an applicant has qualified for selection, there is no way of knowing when, if ever, his turn will come. When and if an applicant is selected at random, it will come up on short notice and unexpectedly. It is unlikely that a genuine job offer could be predicated on such a condition.

Such offers would most probably be accommodations granted to a friend or relative the employer wanted to help immigrate. It is unlikely that in a true employer-employee relationship, the employer would hold a job open, waiting years for an immigrant who may never come, or will come unexpectedly.

The Department also has other reservations about the bill's proposed point system, which are detailed in our written submission.

It should also be noted that by restricting numbers allocated to the fifth preference, brothers and sisters of U.S. citizens, but at the same time grandfathering in those already registered, the already-established waiting list will not be exhausted until well into the next century. In effect, fifth preference will be closed to new applicants.

This completes my formal statement, Mr. Chairman. I will be happy to answer any questions.

Senator KENNEDY. Thank you very much.

[Prepared statement, along with additional material, follow:]

PREPARED STATEMENT OF JEROME C. OGDEN

DEPUTY ASSISTANT SECRETARY FOR VISA SERVICES

Mr. Chairman, Members of the Subcommittee, I am pleased to appear before you today to present the Department of State's views and comments on S. 1611, which would make major changes in the immigration selection system.

The Department of State agrees with the objectives of this bill, which are to develop a framework for immigration that best serves the interests of the American people. The major policy questions raised in the proposed system in this bill relate, for the most part, to domestic demographic, labor and economic issues, and the Department will defer to the agencies directly involved in those issues for their comments.

There is, however, one foreign policy issue on which the Department of State should speak. The allocation in section 4(b)(3)(B)(i) of a large number of units of assessment to natives of certain designated countries seems to be a return to a system of preferences based on national origin. The Department strongly supported eliminating preferential treatment based on national origins when the INA was amended in 1965. It was the Department's view then that favoring immigration from one country over another was inimical to our foreign policy interests. The Department continues to feel the same way.

The Department's other main concern with this bill is the

COST AND DIFFICULTY OF ADMINISTRATION.

OF THE 50,000 NUMBER INCREASE IN THE WORLDWIDE LIMITATION, THE DEPARTMENT ESTIMATES THAT AT LEAST 45,000 WOULD RESULT IN ADDITIONAL VISAS BEING ISSUED BY CONSULAR OFFICERS ABROAD. THAT IS AN EXPENSE OUR PRESENT BUDGET WILL NOT BEAR.

THIS EXTRA EXPENSE WOULD BE ESPECIALLY ONEROUS AT THIS TIME SINCE WE DO NOT YET KNOW WHAT THE COSTS OF IRCA WILL BE. EVEN WITHOUT IRCA, IMMIGRATION OUTSIDE THE NUMERICAL LIMITATIONS WILL SOON MATCH, AND BY 1990 IS LIKELY TO EXCEED, IMMIGRATION WITHIN THE LIMITATION. WHEN CONSIDERING FURTHER CHAIN MIGRATION, AND ESPECIALLY AS IRCA CREATES A LARGE BODY OF NEW PERMANENT RESIDENT ALIENS AND, EVENTUALLY, CITIZENS, THE COMBINATION OF THESE TWO TRENDS WILL INCREASE IMMIGRATION EVEN MORE DRAMATICALLY, AT A TIME THAT WE DO NOT EXPECT TO HAVE RESOURCES AVAILABLE TO EXPAND OUR VISA ISSUING CAPACITY WITHOUT INCREASED APPROPRIATIONS.

ANOTHER COST OF THIS BILL IS ADMINISTERING THE [illegible] [illegible] "INDEPENDENT-3" CATEGORY CREATED BY SECTION 4(B)(3)(B). THAT IS A COST THAT WILL FALL ENTIRELY ON THE DEPARTMENT OF STATE. BY THE TERMS OF THE BILL, THERE IS NO RESTRICTION ON WHO MAY BE ALLOWED TO TRY TO QUALIFY. THERE IS, OF COURSE, NO WAY OF KNOWING EXACTLY HOW MANY POTENTIAL APPLICANTS WILL TRY, BUT GIVEN PAST EVIDENCE OF PRESSURES TO IMMIGRATE TO THIS COUNTRY, it is reasonable to assume that there will be hundreds of thousands, if not millions, of people who will submit cases for consular officers to adjudicate. Each of these potential candidates would have the right to have his arguments heard, evidence evaluated, doubts resolved, and if necessary, fraud investigated. They may, moreover, keep on trying until they are either successful or exhausted. There would also have to be established a unit within the visa office to which all cases would have to be sent for review to make certain that the units of assessment were being awarded in a fair and uniform manner and that each case had equal access to the random selection. At current levels, the Department's personnel resources are simply not adequate to handle this anticipated volume of additional work.

The point system for the independent-3 category would be difficult to administer for other reasons, as well. Once an applicant had qualified for selection, there is no way of knowing when, if ever, he will be picked. When and if an applicant's number is selected at random, it will come on short notice and unexpectedly. It is unlikely that a genuine job offer could be predicated on such a situation. Such offers would most probably be accommodations granted to a friend or relative the employer wanted to help immigrate. It is unlikely that in a new ~~genuine~~ employer-employee relationship, the employer would hold a job open, waiting years for an immigrant who may

IN THE END NEVER BE ABLE TO COME. IT SHOULD ALSO BE NOTED THAT THERE IS NO CONNECTION BETWEEN AWARDING UNITS OF ASSESSMENT FOR A JOB OFFER AND AWARDING THEM FOR POSSESSING A NEEDED SKILL OR FOR HAVING SPECIAL TRAINING OR EDUCATION.

THERE IS ALSO THE QUESTION OF WHETHER AN APPLICANT, ONCE QUALIFIED FOR SELECTION, REMAINS QUALIFIED FOREVER, REGARDLESS OF FUTURE CHANGES IN HIS CONDITION. UNDER THE PROVISIONS OF SECTION 4(B)(3)(B)(VII), THE PASSAGE OF TIME ALONE MIGHT CAUSE AN APPLICANT TO LOSE POINTS. IF CHANGES CAUSE THE TOTAL OF UNITS OF ASSESSMENT TO RECEDE BELOW SEVENTY, IS THE APPLICANT'S NAME REMOVED FROM THE POOL, OR HAVING ONCE QUALIFIED, IS THE APPLICANT FOREVER QUALIFIED?

AT THIS POINT, IT MIGHT BE USEFUL TO DISCUSS HOW SOME OF THE PROVISIONS OF THE BILL MIGHT WORK OUT IN PRACTICE. FIRST, THERE IS NO WAY OF TELLING FROM WHERE THE BENEFICIARIES OF THE INDEPENDENT-3 CATEGORY MIGHT COME. THE POINT SYSTEM MAKES IT EASIER FOR NATIVES OF CERTAIN DESIGNATED COUNTRIES TO QUALIFY FOR SELECTION, SO PRESUMABLY MANY WILL DO SO. ON THE OTHER HAND, INTEREST IN IMMIGRATION IS MUCH HIGHER IN OTHER COUNTRIES SUCH AS INDIA, MEXICO, KOREA AND THE PHILIPPINES. IT IS POSSIBLE THAT SO MANY FROM THOSE COUNTRIES WILL QUALIFY THAT THEY MIGHT PROVIDE A DISPROPORTIONATE NUMBER OF THE SELECTEES. WE HAVE NO EXPERIENCE TO GUIDE US IN PREDICTING FROM WHICH COUNTRIES THE MAJORITY OF INDEPENDENT IMMIGRANTS WILL COME

REGARDLESS OF A POINT SYSTEM WEIGHTED IN FAVOR OF CERTAIN COUNTRIES.

RESTRICTING THE NUMBERS ALLOCATED TO THE FIFTH PREFERENCE BROTHERS AND SISTERS OF U.S. CITIZENS, BUT AT THE SAME TIME GRANDFATHERING IN THOSE ALREADY REGISTERED, WILL RESULT IN THE CURRENT WAITING LIST EXTENDING WELL INTO THE NEXT CENTURY. IN EFFECT, THE FIFTH PREFERENCE WILL BE CLOSED TO NEW APPLICANTS FOR MANY YEARS TO COME.

DELETION OF THE VISA NUMBER APPORTIONING PROVISION OF SECTION 202(E) OF THE INA WILL HAVE THE EFFECT OF CLOSING IMMIGRATION IN THE LOWER PREFERENCES IN SOME OF THE HEAVILY OVERSUBSCRIBED COUNTRIES SUCH AS THE PHILIPPINES, DOMINICAN REPUBLIC AND MEXICO. ALLOWING THOSE COUNTRIES TO USE THEIR ENTIRE CEILING FOR THE HIGHER PREFERENCES WILL ALSO CAUSE GREATER COMPETITION WORLD-WIDE IN THOSE CATEGORIES.

IN THE VIEW OF THE DEPARTMENT OF STATE, THE MOST TROUBLESOME QUESTION AFFECTING IMMIGRANT VISA ALLOCATION UNDER THE CURRENT PREFERENCE SYSTEM IS THE BACKLOG THAT RESULTS IN LONG DELAYS IN IMMIGRATION FOR SPOUSES OF PERMANENT RESIDENT ALIENS. THAT DELAY CAN BE AS LONG AS FOURTEEN YEARS IN THE CASE OF MEXICO, AND IS NEARLY A YEAR FOR THE WORLD IN GENERAL. MULTI-YEAR DELAYS ALSO ARE THE NORM IN THE FIFTH PREFERENCE CATEGORY FOR BROTHERS AND SISTERS OF U.S. CITIZENS. THERE MAY

WELL BE WAYS TO ALLEVIATE THESE BACKLOGS. BUT ANY PROPOSAL MUST BE STUDIED CAREFULLY TO ENSURE THAT IT DOES NOT HAVE UNINTENDED SIDE EFFECTS FOR OTHER GROUPS ENTITLED TO IMMIGRATION BENEFITS. IN THE FINAL ANALYSIS, MR. CHAIRMAN, IT MUST BE RECOGNIZED THAT GIVEN THE ENORMOUS WORLDWIDE DEMAND FOR THE OPPORTUNITY TO IMMIGRATE TO THE UNITED STATES, ANY SYSTEM WHICH SEEKS TO CONSTRAIN THAT DEMAND WITH ANNUAL NUMERICAL LIMITATIONS MUST INEVITABLY RESULT IN BACKLOGS OF ONE KIND OR ANOTHER AMONG OR WITHIN IMMIGRANT CATEGORIES.

THIS COMPLETES MY FORMAL STATEMENT, MR. CHAIRMAN. I WILL BE HAPPY TO RESPOND TO ANY QUESTIONS YOU OR OTHER MEMBERS OF THE SUBCOMMITTEE MAY HAVE.

1348V
10/21/87

NONPREFERENCE IMMIGRANT VISA AVAILABILITY UNDER SECTION 314 OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986: DETERMINATION OF AREAS "ADVERSELY AFFECTED" BY THE ENACTMENT OF PUBLIC LAW 89-236

Section 314 of the Immigration Reform and Control Act of 1986 makes available 5,000 visa numbers in each of fiscal years 1987 and 1988 to nonpreference immigrants, with the proviso that the Secretary of State shall first make such visa numbers available to qualified immigrants who are natives of foreign states from which immigration to the United States was adversely affected by the enactment of P.L. 89-236, the Act of October 3, 1965 which revised the basis of legal immigration to the United States.

The Department of State defined by regulation the term "adversely affected" countries as those whose average annual rate of immigration to the United States from July 1, 1966 to September 30, 1985 was less than their average annual rate of immigration during the period from July 1, 1953 to June 30, 1965. The average annual rate of immigration during each of the periods mentioned above was determined by totaling the number of natives of each country who were admitted to the United States for permanent residence for each such period, and dividing each total by the number of fiscal years in the respective period. The figures on annual immigrant admissions used for these calculations were obtained from standard tables prepared by the Statistical Analysis Branch of the Immigration and Natuaralization Service's Central Office, and are available upon request from that office.

The formula described above appeared most appropriate since:

1. By using total admission figures, as opposed to numerically limited admissions only, the possible adverse effects of the 120,000 ceiling imposed on Western Hemisphere immigration by P.L. 89-236 could be considered; previously, there had been no numerical limit on Western Hemisphere immigration.

2. Averages of relatively long measuring periods, rather than any single year's figure, which could be aberrational, provided more reliable statistical data as they reflect patterns over time.

3. The measuring periods selected represent, respectively, all full fiscal years during which the national origins quota system originally in the Immigration and Nationality Act of 1952 was in effect, and all full fiscal years subsequent to P.L. 89-236 of 1965 for which final figures were available when the calculations were made in 1986.

Dependent areas were treated as entities separate from the governing countries to give a truer picture of the actual effect of P.L. 89-236 on each area, and because P.L. 89-236 increased the dependent area numerical limitation from 100 to 200; this limit was subsequently increased further by other legislation.

In instances where past INS figures of immigrants admitted from two or more countries were consolidated because of their political status or because of the United States Government's position at the time on certain geographic entities, such consolidated figures were prorated on a basis proportional to the populations of the countries concerned.

The list of "adversely affected" areas identified by this formula is attached.

NONPREFERENCE IMMIGRANT VISA AVAILABILITY UNDER SECTION 314 OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986: IDENTIFICATION OF ADVERSELY AFFECTED AREAS

ADVERSELY AFFECTED CHARGEABILITY AREA	ANNUAL AVERAGE OF IMMIGRANTS ADMITTED BY COUNTRY OF BIRTH July 1, 1953 to June 30, 1965	ANNUAL AVERAGE OF IMMIGRANTS ADMITTED BY COUNTRY OF BIRTH July 1, 1966 to Sept. 30, 1985	POST PL 89-236 DECREASE IN ANNUAL AVERAGE
AFRICA			
Algeria 1/	149	132	17
Tunisia 1/	132	93	39
ASIA			
Indonesia	1,582	766	816
Japan	5,028	4,466	562
EUROPE			
Albania	205	148	57
Austria	2,294	554	1,740
Belgium	1,172	471	701
Czechoslovakia	2,234	1,361	873
Denmark2/	1,400	555	845
Estonia	214	29	185
Finland	683	365	318
France2/	3,983	2,038	1,945
German Democratic Republic	6,515	1,398	5,117
Germany, Federal Republic of	24,510	6,472	18,038
Gibraltar	18	12	6
Great Britain & No. Ireland2/	23,835	14,441	9,394
Hungary	4,995	1,190	3,805
Iceland	164	145	19
Ireland	6,853	1,500	5,353
Italy	20,456	12,818	7,638
Latvia	436	68	368
Liechtenstein	10	5	5
Lithuania	560	79	481
Luxembourg	91	33	58
Monaco	13	10	3
Netherlands2/	4,696	1,217	3,479
Norway	2,359	501	1,858
Poland3/	8,189	5,170	3,019
San Marino	103	19	84
Sweden	2,017	820	1,197
Switzerland	1,801	797	1,004
NORTH AMERICA			
Bermuda	195	186	9
Canada	30,986	13,188	17,798
Guadaloupe	79	61	18
OCEANIA			
New Caledonia	7	3	4
SOUTH AMERICA			
Argentina	3,097	2,531	566

1/France sub-quota during part of July 1, 1953 to June 30, 1965 period.
2/Mother country only.
3/Includes Danzig.

NOTES: The above figures are based on INS records of total immigrants admitted (all categories) by country of birth. FY 1966 has not been included in calculations since PL 89-236 took effect midway through that year.

Figures for dependent areas have been calculated separately from those of the mother country.

In instances where past figures of immigrants admitted for two or more countries were consolidated, these figures have been prorated in proportion to population.

QUESTIONS FOR

Jerome Ogden, Deputy Asst. Secretary (State)
SUBMITTED BY SENATOR PAUL SIMON

1. Does the Department believe that the new independent category provision of S. 1611 will actually cause the admission of those prospective immigrants--educated and skilled individuals without family ties--that it is designed to help?

2. Will the Department in administering the point system for the independent category under S. 1611 give any preference to applicants who score over 100 points as compared to those who score between 70-99?

3. Many have raised valid concerns about the difficulty Irish, Italian and other immigrants have in fulfilling the requirements of the family preference system. Would the provision in S. 1611 adding a new independent category of 50,000 visas satisfactorily address this problem without giving extra points for the country of origin?

4. In determining the qualifications of applicants for the independent category visa, what criteria will be Department use to grant points in the areas of vocational preparation, desired skill, experience in desired skill, arranged employment and English speaking and reading ability?

5. On what basis will the Department determine whether a job offer is bona fide?

6. Does the Department envision the granting of independent category visas to applicants scoring over 70 on a random basis? If a lottery-type system is not used, what alternatives does the Department recommend?

7. Does the definition of "adversely affected country" take into account the economic conditions of the country which would encourage or discourage persons from leaving that country?

8. Does the Department have any analysis as to what reasons other than the passage of the 1965 Act may have caused the drop in average immigration from the adversely affected countries?

1. Does the Department believe that the new independent category provision of S. 1611 will actually cause the admission of those prospective immigrants -- educated and skilled individuals without family ties -- that it is designed to help?

It is very difficult, if not impossible, to predict what the mix of immigrants would be under the nonpreference classification proposed in S.1611. The proposed system would likely produce two fairly distinct sub-sets of qualified applicants. One sub-set would be those, both from adversely affected countries and other countries, who had attained 70 points because of advanced education and work experience in short supply skill fields. The second sub-set would be natives of adversely affected countries with minimal education and few, or no, occupational skills who had qualified principally because they are from adversely affected countries. (In this connection, it should be noted that a native of an adversely affected country below age 40, able to speak and read English who had prearranged employment in the U.S. would attain 70 points without having completed high school and 82 points with a high school diploma).

The Department cannot predict what the total number of qualified applicants might eventually be, nor how many of the eventual total might be part of either of the two sub-sets. It seems likely, however, that the overall total of qualified applicants would be very large -- several hundreds of thousands in the short run, reaching into the millions over time.

The provision of S.1611 requiring selection of qualified applicants "at random" further complicates any prediction of the personal characteristics of nonpreference immigrants. The mathematical laws of probability suggest that a random selection from among a set composed of two sub-sets will reflect roughly the composition of the set.

In summary, some of the nonpreference immigrants would be highly skilled; others would have few, or no, skills. It is not possible to provide greater specificity

2. Will the Department in administering the point system for the independent category under S. 1611 give any preference to applicants who score over 100 points as compared to those who score between 70-99?

As written, S.1611 would not permit taking into account an applicant's actual point count beyond imposing the minimum of 70 points. The requirement that the applicants be selected "at random" would preclude, both legally and operationally, preferring an applicant whose point count was 100 or above to one whose point count was between 70 and 99.

3. Many have raised valid concerns about the difficulty Irish, Italian and other immigrants have in fulfilling the requirements of the family preference system. Would the provision in S.1611 adding a new independent category of 50,000 visas satisfactorily address this problem without giving extra points for the country of origin?

Elimination of the thirty-point factor for natives of adversely affected countries such as Ireland or Italy would put natives of those countries on the same footing as natives of all other countries. This would eliminate the possibility (noted in the response to Question #1) that natives of adversely affected countries with only minimal education and few, or no, skills could qualify. Natives of those countries who had advanced education and needed skills would continue to qualify on that basis.

If the intent of the proponents of S.1611 is to promote immigration by natives of adversely affected countries who do not have advanced education and/or needed skills then the adversely affected country factor is crucial and its elimination would thwart that intent. If, on the other hand, the intent is to promote immigration of highly skilled and educated aliens generally, without regard to country of origin, elimination of the adversely affected country factor would have little or no effect.

4. In determining the qualifications of applicants for the independent category visa, what criteria will the Department use to grant points in the areas of vocational preparation, desired skill, experience in desired skill, arranged employment and English speaking and reading ability?

Certain of the factors mentioned -- vocational preparation, desired skill and experience in a desired skill -- would be determined by the Secretary of Labor. Thus we defer to the Department of Labor on these issues.

Under S.1611, as written, the only statutorily permissible criterion under the pre-arranged employment factor would be that the offer of employment have been made in good faith. Having a bona fide offer of employment in the U.S. would require the award of the full twenty points, without regard to the type of job, the wages and working conditions or any other considerations.

The Department has substantial concerns about the determination of an alien's entitlement to the statutory ten points for "speaking and reading English". As written, S.1611 provides no guidance for implementation of this provision, except that there is no basis for awarding partial points. An alien would either receive the full ten points or no points at all. It thus seems necessary to establish a minimum standard of competency at or above which the full ten points would be awarded and below which no points would be awarded. Some alien applicants would be native speakers of English and could meet any standard which might be set. Others, while not native speakers, would have studied and used English to the point of being virtually bi-lingual and also could meet virtually any standard which might be set. But there would be many who have some acquaintance with English and could carry on simple conversations or comprehend simple written texts but would become lost in complex discussions or written material. The Department believes that the Congress must provide some guidance on the level of competency it considers appropriate for qualification.

5. On what basis will the Department determine whether a job offer is bona fide?

Determining the bona fides of a job offer would be a very difficult task. Under current law, consular officers have to consider the bona fides of offers of employment in a number of cases, some involving occupational preference applicants and others involving Immediate Relative and relative preference applicants who are relying upon the offer of employment to meet the public charge requirements of section 212(a)(15) of the Act. In all those cases, however, this consideration takes place very shortly before the alien will immigrate, if qualified for visa issuance, and is thus very near reporting to the job, if the offer is a genuine one. Thus, the inquiry tends to be a factual one -- the genuineness of the documents, the intent of the alien to report to the job after admission, the intent of the prospective employer to employ the alien after admission, the ability of the employer to pay the wages offered, etc. There is, in this area, a certain amount of fraud and misrepresentation, as there is in many areas of the immigration law and anti-fraud activities are labor intensive and time-consuming. Nevertheless, within the limits of available resources, consular officers can pursue such matters reasonably effectively when the alien is on the point of proceeding to the United States and will, if the job is a genuine one, presumably report to it in the near future.

Assessing the bona fides of offers of employment presented by aliens seeking to qualify for the nonpreference class proposed in S.1611 would be a very different matter. Under that system the alien would have to present the offer of employment in connection with qualifying to compete under the "at random" selection system. At that stage of the process neither the alien, the prospective employer, nor anyone else would know when, if ever, the alien might report to work. Most consular officers -- and most other people -- would find it very difficult to treat as bona fide an offer of employment made when the employer cannot possibly know when, if ever, the prospective employee might report to work. Each case would have to be considered individually and a judgment made on this issue.

6. Does the Department envision the granting of independent category visas to applicants scoring over 70 on a random basis? If a lottery-type system is not used, what alternatives does the Department recommend?

As written, S.1611 would require selection "at random" and, thus, the Department would be under an affirmative duty to make the selection on that basis. There are two possible alternatives which the Congress could substitute for the "at random" requirement.

The first would be selection in chronological order of qualification based upon the date the evidence of qualification was submitted. The other would be selection from among those who had achieved 70 points in order of point count, with those scoring highest selected first.

Selection in chronological order would have the virtues of orderliness and predictability. Under such a system, every qualified applicant would have a general sense of roughly how long he or she would have to wait for selection. Even if the number of qualified applicants became very large (as seems likely) and the waiting period extended to many years, perhaps decades, each applicant would know that and could plan his or her life accordingly. Under an "at random" selection system, no one would know, or could even guess, when -- if ever -- he or she might be selected.

Selection by point score (from the highest, in descending order) has certain attractions, but could prove virtually impossible to administer. Since new applicants would qualify virtually every working day, there would never be a day on which the Department could be certain that it was processing applicants correctly in order of their point scores. The Department could find itself either in the position of unwittingly processing the applicants incorrectly or of having to delay earlier applicants with lower scores in favor of late-comers with higher scores.

7. Does the definition of "adversely affected country" take into account the economic conditions of the country which would encourage or discourage persons from leaving that country?

S.1611 does not contain a definition of the term "adversely affected country". The exact wording of the pertinent portion of S.1611 is "a country adversely affected by the enactment of Public Law 89 - 236, as determined by the Secretary of State". It is clear that that phrase is derived from the text of section 314 of Public Law 99 - 603 (IRCA), which reads, in pertinent part "...natives of foreign states the immigration of whose natives to the United States was adversely affected by the enactment of Public Law 89 - 236." That phrase also was not defined by statute.

There is nothing in the text of section 314 or in the comments thereon in the Conference Committee report that would have supported considering economic conditions in a country in determining whether it was "adversely affected" within the meaning of section 314. The Department anticipates that it would adopt the definition contained in 22 CFR 43.2 as the definition for the purpose of implementing the provisions of S.1611 if enacted as written.

In implementing section 314 (the so-called "NP-5 Program"), the Department published a regulatory definition of the term "adversely affected country" -- 22 CFR 43.2, published as Interim Rule January 14, 1987, 52 F.R. 1447; Final Rule, May 13, 1987, 52 F.R. 17944. That definition reads as follows:

" 'Adversely affected country' means a foreign state whose average annual rate of immigration to the United States during the period from July 1, 1966, to September 30, 1985, was less than its average annual rate of immigration during the period from July 1, 1953, to June 30, 1965. A foreign state's average annual rate of immigration during the periods described in the preceding sentence shall be determined by totalling the number of natives of the foreign state who were admitted to the United States for permanent residence, as reported in the Annual Reports of the Immigration and Naturalization Service, for each such period and dividing each total by the number of fiscal years in the period. For the purposes of this definition a colony or component or dependent area of a foreign state overseas from such foreign state shall be treated as a separate foreign state".

8. Does the Department have any analysis as to what reasons other than the passage of the 1965 Act may have caused the drop in average immigration from the adversely affected countries?

The Department has never made a study of the reasons for the decline in immigration from certain countries after 1965 and, thus, can offer only general observations in this matter. It is probable that there is no single reason for the declines. The Department suspects that improved economic conditions in some countries such as Italy likely contributed to the decline by removing or lessening the incentive to emigrate. Also, the 1965 amendments, by removing the quota restrictions against certain other countries, allowed natives of those countries to compete for immigration on an equal basis for the first time and released a large demand for immigration which had built up during the many years of restrictive quotas. Finally, the establishment of uniformly applicable selection criteria -- needed skills and relatives -- made it impossible for natives of countries which had had large quotas under the pre-1965 system to immigrate without any identifiable skills or qualifying relatives.

Questions to Jerome Ogden submitted by Senator Alfonse D'Amato

1. Can you estimate how many additional immigrants from each of the countries adversely affected by the 1965 amendments might be admitted to the United States if S. 1611's point system for nonpreference visas is adopted?

2. What would be the benefits to the residents of these adversely affected countries if relatively more points are assigned to the following categories:
   (A) education;
   (B) higher education;
   (C) adversely affected country?

3. One method of selecting recipients of the 50,000 new visas created by S. 1611 is random computer selection. Can you recommend any other method, such as the system employed by the NP-5 program, that would be consistent with the equitable goals and nature of the program?

4. Again with respect to the proposed point system, what are the benefits, adverse effects, and other impacts, of treating persons with scores between 100 and 147 the same as those with scores between 70 and 99?

1. Can you estimate how many additional immigrants from each of the countries adversely affected by the 1965 amendments might be admitted to the United States if S.1611's point system for nonpreference visas is adopted?

There is no way to predict how many natives of any country -- adversely affected or other -- might qualify under the proposed point count system. Moreover, the "at random" selection requirement would make it impossible to guess how many natives of any country out of those who had qualified might be selected.

2. What would be the benefits to the residents of these adversely affected countries if relatively more points are assigned to the following categories:
(A) education;
(B) higher education;
(C) adversely affected country?

The Department cannot speculate on the effect of increasing the number of points awarded for education or for higher education, since there is no way to predict the educational background of those who might try to qualify under the proposed nonpreference classification

On the other hand, awarding more points for being a native of an adversely affected country would clearly make it easier for natives of those countries to qualify without meeting any of the other requirements such as age, education, pre-arranged employment or vocational preparation.

3. One method of selecting recipients of the 50,000 new visas created by S.1611 is random computer selection. Can you recommend any other method, such as the system employed by the NP-5 program, that would be consistent with the equitable goals and nature of the program?

The Department is not in a position to pass judgment on the possible methods of selection, but there exist two alternatives to the "at random" method which would be required under S.1611, as written -- chronological selection and selection by point score.

Chronological selection would be based upon the date the evidence of qualification was submitted. This is the method adopted for implementation of the NP-5 program. Selection in chronological order would have the virtues of orderliness and predictability. Under such a system, every qualified applicant would have a general sense of roughly how long he or she would have to wait for selection. Even if the number of qualified applicants became very large (as seems likely) and the waiting period extended to many years, perhaps decades, each applicant would know that and could plan his or her life accordingly. The major drawback to chronological selection, of course, is that there will be intense competition to be among the first to qualify.

Selection by point score (from the highest, in descending order) has certain attractions, but could prove virtually impossible to administer. Since new applicants would qualify virtually every working day, there would never be a day on which the Department could be certain that it was processing applicants correctly in order of their point scores. The Department could find itself either in the position of unwittingly processing the applicants incorrectly or of having to delay earlier applicants with lower scores in favor of late-comers with higher scores.

4. Again with respect to the proposed point system, what are the benefits, adverse effects, and other impacts, of treating persons with scores between 100 and 147 the same as those with scores between 70 and 99?

As is pointed out in the response to question #3, selection by point score (the highest first, in descending order) has certain attractions, but would be very difficult to administer. Leaving aside the administrative difficulties, there is a certain logic to the proposition that, from among all those having qualities and characteristics considered to be desirable, those having them to the greatest extent or in the greatest degree should be selected first, ahead of those having them to a lesser degree or extent.

Questions to Jerome Ogden Submitted by Senator Alan K. Simpson

1. How would you suggest that we create a system for admitting independent immigrants without creating the long backlogs that currently exist in the 2nd or 5th preferences?

2. Under the bill introduced by Sen. Kennedy, are long backlogs likely to result if the eligible applicants under the "point system" are not somehow screened or randomly selected?

1. How would you suggest that we create a system for admitting independent immigrants without creating the long backlogs that currently exist in the 2nd or 5th preferences?

There are two ways to avoid creating backlogs. One is to remove numerical limitations on immigration entirely or to establish a numerical limitation so large that it would accommodate foreseeable demand. The other is to establish qualification tests so stringent that very few aliens would qualify. It might also be possible to combine the two methods. It must be recognized, however, that it would be very difficult, if not impossible, to fine tune such a system with any precision.

2. Under the Bill introduced by Sen. Kennedy, are long backlogs likely to result if the eligible applicants under the "Point System" are not somehow screened or randomly selected?

The Department does not believe that the selection method would affect the reality of the situation that would result from enactment of S.1611, although it might well affect the perception of that reality. The Department foresees that very large numbers of aliens would qualify for the proposed nonpreference class, far exceeding the amount of visa numbers available for that class. Under a chronological selection system the large mass of qualified applicants awaiting selection would assume a linear shape -- the chronological waiting list. Under an "at random" selection system, the mass of applicants awaiting selection, while just as large, would be formless. It is possible that its formlessness might make the mass appear to be smaller than if it were linear.

Senator KENNEDY. Mr. Hankin.

STATEMENT OF CHRISTOPHER G. HANKIN

Mr. HANKIN. Thank you. I will try to be very brief.

We, too, welcome the bill as the start of a healthy and necessary process. We think we share objectives that the committee has and look forward to working with the committee as we seek ways to address and possibly reform the legal immigration system.

Let me just note three areas that will need to be addressed and considered in this process. We deal with them in the written testimony. First, there is the issue of the impacts of IRCA on our labor market and our work force.

I think Congress recognized that these impacts could be large, could be significant, and therefore, they have asked us to do several studies. We have taken on that responsibility and hope to do a good job. We look forward to using the knowledge that can be gained through those studies in this process of looking at the legal immigration system. I do not think there is any doubt of the possibility of large and significant impacts.

Second, the Department, as you know, Mr. Chairman, is in the process of a series of studies and analyses that we are calling Workforce 2000, in which we are looking at certain trends and changes that we see both in the complexion of the work force and our labor market needs. We will need to ensure that those dynamics fit as well as possible with our legal immigration system.

Third, along that vein, I think it is useful to remember that from a work force perspective, there are really two objectives with immigration law, and they need to be balanced against each other. One is our ability to make it responsive to our labor market needs and to those conditions, and second, to protect the U.S. workers from adverse effect.

With regard to the bill itself—with those comments as prologue—we see some fine elements in it—for instance, the amendment to section 214(a)(14). We have had similar ideas as to changes that could be made in the labor certification process to serve the process better. But we do have some serious concerns—especially with the methods currently in the bill for bringing in immigrants in the new nonpreference, independent category. We question whether the methods that are currently in the bill are serving these dual purposes of responding to legitimate labor market needs and also protecting our U.S. workers. We would hope to be able to work with the committee to look at our concerns and see if we cannot redress them.

Senator KENNEDY. Thank you.

[Prepared statement, along with questions and answers, follow:]

STATEMENT OF CHRISTOPHER G. HANKIN
ACTING DEPUTY UNDERSECRETARY
INTERNATIONAL LABOR AFFAIRS BUREAU
U.S DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

October 23, 1987

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to appear before you today to present the Department of Labor's views on the labor-related aspects of S. 1611, the "Immigration Act of 1987." If enacted, this bill would make major changes to our existing system of admitting immigrants to the United States.

Let me first say that, my Department believes that it is useful to begin reviewing the system of legal immigration to the U.S. However, it has been less than a year since the Immigration Reform and Control Act (IRCA) was enacted in an effort to stem the flow of illegals into our country and our labor market. Most of the Act's provisions have only begun to be implemented in the last few months. Thus, the time has been too short for any of us to know much about the direction or extent of IRCA's impacts on the U.S. economy, labor market, and society.

The legalization program established under Sec. 201 of IRCA has been in effect for less than six months, and the legalization program for "Special Agricultural Workers", less than five months. Very little is known about the populations who may be eligible for these programs or their potential labor market role and impact once they achieve legal status.

INS has estimated that 2 million aliens will become lawful permanent residents under these legalization programs. Not only must we assess their economic and labor market impacts, we also need to have a better idea of the potential extent and labor market impact of the secondary flows which they will generate. These flows will arise as newly legalized aliens, first as lawful permanent residents and then as U.S. citizens, petition for the admission of their relatives. While some of these family members will enter under the annual worldwide ceiling on immigration, many are likely to qualify as immediate relatives of U.S. citizens, whose admission is numerically unrestricted. Although these immigrants will be admitted to the U.S. as relatives, they will also undoubtedly enter the U.S. labor force.

In addition, implementation of both employer sanctions and increased enforcement is still in its infancy; the first fine against an employer of illegal aliens was issued just three weeks ago today. It is widely accepted that employment in the U.S. economy is the main magnet attracting illegal aliens to our country. Thus, IRCA's success in diminishing illegal migrant flows will have major impacts on U.S. workers. Within the next few years, we will, through the exhaustive analyses that Congress has required under IRCA, dramatically increase our understanding of these impacts.

The labor market impacts of IRCA will be occuring at the same time as the U.S. workforce is undergoing significant changes of its own. Studies done for the Labor Department by the Hudson Institute and the Bureau of Labor Statistics predict slower U.S. labor force growth between now and the year 2000. It has been estimated that females, native-born blacks and Hispanics, and immigrants will account for 80 percent of all new entrants to the American workforce during this period. While immigrants accounted for seven percent of the labor force in 1985, projections indicate that they will account for 22 percent of new entrants to the labor force over the period 1985--2000. Thus, even without increasing present levels of immigration, the U.S. labor force will be made up of an increasing share of immigrants.

The implications of a larger proportion of immigrants in our labor force will need to be examined. For example, we anticipate that most persons legalizing under IRCA, as well as those in the secondary flows, will be concentrated in low-skill occupations. However, most jobs created between now and the year 2000 will require highly skilled workers.

Despite the increasing demand for higher skill levels in the labor force, the slower labor force growth over the next 13 years may represent a window of opportunity for our Nation's disadvantaged. We don't want to lose this opportunity of a tighter labor market to more fully integrate individuals from economically and educationally disadvantaged backgrounds into the U.S. labor force. Therefore, any review of the U.S. legal immigration system must take into consideration these goals of our Nation's human resources development policy.

The present system of admitting legal immigrants has been in effect since 1965. An exhaustive review of the laws governing legal immigration was carried out, first by the Select Commission on Immigration and Refugee Policy in 1979-80, and then in 1981 by the President's Task Force on Immigration and Refugee Policy. The Administration concluded that the existing laws were both "rational and fair," and therefore recommended against any major changes in legal immigration policy. While circumstances have changed since that time, most notably with the enactment and implementation of IRCA, we strongly believe that we will need to more fully evaluate the impacts of IRCA, as well as changing U.S. labor market conditions, in order to knowledgeably consider and recommend changes in our legal immigration system.

I will turn now to the bill itself. Under S. 1611, admissions of immediate relatives of U.S. citizens and refugees would remain unchanged. However, numerically restricted immigration and the current preference system would be changed substantially. The bill would increase the annual worldwide ceiling on immigrant admissions from 270,000 to 320,000 annually. Within that total, it would establish separate numerical restrictions for family reunification and independent immigrants. These numerical limits could be revised two years after the bill's enactment and every five years thereafter. The limit on family reunification immigrants would initially be the same (216,000) as under the existing system. However, the distribution of the numbers within the family reunification preferences would be altered. Additionally, two groups -- adult (at least age 21) unmarried sons and daughters of lawful permanent resident aliens and married siblings of U.S. citizens -- would no longer qualify for admission under family reunification preferences. The bill grandfathers in those petitions filed before enactment.

Numerically restricted admissions for other than family reunification purposes would increase from 54,000 to 104,000 annually. These independent immigrants would be admitted under a three-class preference system: (1) members of the professions holding doctoral degrees or aliens of exceptional ability, (2) skilled workers, and (3) a new category known as nonpreference aliens. While there are similarities between the first two categories of independent immigrants and the current third and sixth preferences, there are also substantial differences which need to be considered.

Admissions under the first category of independent immigrants would initially be limited to 27,000, the same level as the current third preference, i.e., members of the professions or persons of exceptional ability in the sciences and arts. But this category of independent immigrants would be more narrowly defined than current third preference, since it would limit members of the professions to those holding doctoral degrees. The bill further tightens this category by specifying that possession of a degree, license or certificate is not by itself sufficient evidence of exceptional ability.

Likewise, the second category of independent immigrants--skilled workers--is defined more narrowly than the current sixth preference which also includes unskilled workers in short supply. Admissions under this second category of independent immigrants would initially be limited to 27,000, the same level as current sixth preference.

The third category -- nonpreference aliens -- is a new category and would be limited to 50,000. These nonpreference aliens would be selected at random from a pool of those qualified aliens ages 18 and over who have registered for a visa. Qualified aliens are those who achieve at least 70 units of assessment (out of a maximum of 147), based on the following eligibility criteria:

(1) chargeability to a country adversely affected by P.L. 89-236 [30 units],

(2) pre-arranged employment in the U.S. [20 units],

(3) completion of high school education [12 units],

(4) completion of bachelor's degree or equivalent [10 units],

(5) graduate degrees [1 to 5 units as determined by the Secretary of Education],

(6) vocational preparation [1 to 10 units as determined by the Secretary of Labor],

(7) ages 18 to 40 [10 units, except that 2 units are deducted for every year in excess of age 40],

(8) possession of needed skills [1 to 20 units as determined by the Secretary of Labor],

(9) work experience in the above skills [1 to 10 units as determined by the Secretary of Labor],

(10) married brother or sister of an adult U.S. citizen [10 units], and

(11) ability to speak and read English language [10 units].

As with current third and sixth preference immigrant workers, aliens entering under the first two independent immigrant categories would be required to have a U.S. job offer and labor certification. However, the bill specifically exempts nonpreference aliens from the labor certification requirement.

While we would wish to review this issue further, the requirement of increased skill levels for admission to the U.S. in the first two independent immigrant categories appears to be in line with future U.S. labor force needs. As Barry Chiswick has pointed out, highly skilled workers tend to be most beneficial to the U.S. labor force. In addition, the Department's analyses of the U.S. labor force in the year 2000 indicate that most new jobs in the U.S. economy will demand more education and higher levels of language, math, and reasoning skills than have been necessary in the past.

However, the Department has serious concerns about any proposal to admit nonpreference aliens without labor certification. By definition, these immigrants would not be admitted to fill a specific labor market need nor would they have exceptional abilities. By not conditioning the admission of these immigrants on government screening for U.S. worker availability and adverse impact on U.S. wages and working conditions, S. 1611 would leave American workers vulnerable to displacement and/or a deterioration of their wages and working conditions. While we recognize the resource demands that the certification process imposes on this Department, we believe that process to be fundamental to the protection of U.S. workers.

Aliens may qualify as nonpreference independent immigrants on the basis of neither the labor force needs of this country nor the reunification of families. For example, the mere combination of (1) the correct age, (2) a bachelor's degree, (3) fluency in English, and (4) being a native of an adversely affected country would qualify millions of aliens as nonpreference independent immigrants.

Even if aliens qualify for nonpreference status on the basis of criteria that appear intended to meet U.S. labor force needs, there is nothing to prevent those aliens from displacing

U.S. workers. For example, there is no requirement that an alien receiving points for having skills needed in the U.S. seek a job that would use those skills. Nor is there any requirement that points be given only for pre-arranged employment in occupations for which there is a shortage of U.S. workers.

Furthermore, the random selection of these immigrants may negate the value of many of the eligibility criteria. For example, if 50,000 immigrants are selected annually from a pool of potentially millions of applicants, one's chances of being selected in any given year are extremely slim. If it takes 20 years for an alien to be selected, there is no guarantee that the U.S. economy will still need those skills which initially qualified the immigrant.

Similarly, an alien receives 20 units of assessment for pre-arranged employment in the United States. However, the potential employer would have absolutely no way of predicting when--if ever--his arranged employee would be selected for immigration. This leads to the question of whether or not an alien who receives qualifying points for pre-arranged employment should remain eligible indefinitely for a nonpreference visa. I am also concerned with the potential for fraud inherent in the pre-arranged employment criteria. Nothing in the bill requires that the employment offer be and/or remain legitimate.

Under S. 1611, the Secretary of Labor would be responsible for assigning units of assessment to intending nonpreference immigrants with regard to the following eligibility criteria: (1) extent of vocational preparation, (2) extent of skills needed in the U.S. and (3) extent of work experience relating to these skills. With estimates of potential applicants in this category ranging into the millions, the Labor Department is concerned that this considerable increase in workload would be extremely staff intensive and costly, and without offsetting benefits to the U.S.

I would like to make one more comment on the criteria for qualification as a nonpreference independent immigrant-- the proposed granting of 30 units of assessment to natives of countries adversely affected by the 1965 Amendments. I fear this preferential treatment of nationals of certain countries may have potential divisive domestic repercussions. The Department of Labor has serious reservations about any changes in U.S. immigration policy that would move us away from our current uniform treatment of persons from all nations and back to the pre-1965 ethnocentric system for selecting immigrants.

S. 1611 would also amend Section 212(a)(14) of the Immigration and Nationality Act (INA) relating to the procedure for granting labor certifications to aliens coming to the U.S. for employment purposes. Under current law, the Secretary of Labor makes labor certification determinations on a case-by-case basis, deciding in each case: (1) whether there are sufficient U.S. workers who are able, willing, qualified and available at the time of application for a visa and at the place where the alien is to perform such labor; and (2) whether the employment of that particular alien would adversely affect the wages and working conditions of U.S. workers similarly employed. The proposed bill would permit the Secretary of Labor to make such determinations on the basis of labor market information. Thus, while provision for individual case determination would remain, recruitment of workers for specific job opportunities would no longer be required in order to test the availability of qualified workers in the United States.

The bill would also require DOL to conduct a study of how the labor certification process might be streamlined, and, within 6 months of enactment, to report the findings of that study, with recommendations for their implementation, to the Congress.

As we have previously testified on this procedural matter, the Department believes that the use of labor market information in making labor certification determinations could prove significantly less costly and time-consuming than current labor certification procedures.

The Department remains concerned, however, with the application, continued by S. 1611, of the standard "equally qualified" to members of the teaching profession. This special standard of availability, extended to employers of college or university teachers in 1976, enables educational institutions to petition for the admission of "more qualified" aliens, even if qualified U.S. teachers are available.

In our view, American workers should be hired whenever possible, and qualified American workers in professional occupations merit the same kind of labor market protections accorded to workers in all other occupations. While this Department supports, and currently applies, a special standard for aliens of exceptional ability in the sciences or arts, we do not support the application of such a standard to aliens on the basis of their occupation alone.

This concludes my formal statement, Mr. Chairman. We will be available to work on other issues of interest to my Department as the review of our legal immigration system continues. I will be pleased to answer any questions you may have.

Responses to Senator Simpson's Questions

1. How capable is our Government's immigration and labor review apparatus of: (a) determining when a labor shortage exists, and (b) admitting immigrants into that shortage occupation in a prompt manner? Some immigration experts believe that no bureaucracy is capable of quickly determining and addressing such a situation, and that we should therefore merely admit immigrants who possess skills that we believe will be generally beneficial to the country. What is your view of our capability in this area?

The Immigration and Nationality Act (INA) provides that aliens intending to immigrate to the U.S. for purposes of employment must first obtain a certification from the Secretary of Labor that (1) there are not sufficient American workers who are able, willing, qualified and available at time of application for a visa and at the place where the alien is to perform such labor; and (2) the employment of that particular alien will not adversely affect the wages and working conditions of U.S. workers similarly employed. Thus, labor certification has two basic functions: first, to protect the U.S. labor force, and secondly, to allow for the entry of needed workers into the United States.

With regard to the question of whether to admit immigrants with "generally beneficial" skills, we would note that in order to determine which skills are generally beneficial to the U.S. at a given time, one must first know which occupations--requiring what skills--are experiencing labor shortages. Thus, some test of the labor market would seem necessary in any case. Even more importantly, admissions based solely on "generally beneficial" skill levels could fail to provide the necessary protections for U.S. workers against job competition and potential adverse impact on their wages and working conditions.

Under current law, the Secretary of Labor makes labor certification determinations on a case-by-case basis. The INA and the regulations implementing the Secretary's responsibility for permanent labor certification are designed to ensure that employers adequately test the labor market for qualified U.S. workers willing to accept their offers of employment. Thus, current regulations require an employer seeking labor certification on behalf of an alien to offer employment to U.S. workers at wages and working conditions that prevail for that occupation in that area. The employer must recruit both on his own and through the Labor Department's U.S. Employment Service. If an employer has complied with these requirements, and U.S. workers cannot be found, certification will be granted.

The Department of Labor has also established a list of pre-certified occupations, known as Schedule A. These are occupations for which the Department has determined that (1) there is a shortage of U.S. workers and (2) the wages and working conditions of similarly employed U.S. workers will not be adversely affected. There are currently four groups of occupations on Schedule A. Through the rulemaking process, occupations can be added to or deleted from Schedule A as appropriate.

As you know, S. 1611 would permit the Secretary of Labor to make labor certification determinations on the basis of labor market information. While provision for individual case determination would remain, recruitment of workers for specific job opportunities would no longer be required in order to test the availability of qualified workers in the United States. As we have testified, the Department of Labor believes that the use of labor market information in making labor certification determinations could prove significantly less costly and time-consuming than current labor certification procedures, without diminishing the protection afforded U.S. workers under the present system.

2. What is your projection of our country's labor needs in the next century? Do present demographic trends indicate a labor shortage? You mention this point briefly in your written testimony, but I would appreciate your elaboration on it.

As noted in our testimony, the recently released Bureau of Labor Statistics' Projections 2000 showed the labor force increasing at a slower rate in the period 1986-2000 than it has in the past. Specifically, a 1.2 percent annual rate of increase is projected for the 1986-2000 period, compared to a rate of 1.7 percent for 1979-86. Consequently, in numerical terms, labor force growth will slow to an average of 1.6 million a year from the near 3.0 million it reached in some years in the 1970's.

Also, BLS projects important changes in the age composition of the future labor force. Specifically, continued declines are projected among 16-24 year-olds. Consequently, many employers, the military, colleges and universities, and others who recruit first-time jobseekers or deal primarily with individuals in the 16-24 age group, will be faced with a declining pool of individuals. This does not imply shortages for the economy as a whole, but for those dealing with the young age group considerable competition could result. At the same time, this competition could result in increased employment opportunities for the 16-24 year-old population, which has traditionally experienced high unemployment. For example, the October 1987 unemployment rate for this group was 11.8 percent, virtually twice the 6.0 percent for the labor force as a whole.

Further, other disadvantaged groups also have experienced high unemployment rates in recent years. In October 1987, for example, black and Hispanic unemployment rates (12.0 and 8.3 percent respectively) contrasted sharply with the 5.2 percent rate of the white civilian labor force. The slower labor force growth from now to the year 2000 may provide an opportunity to integrate more fully these disadvantaged groups into the labor force.

Responses to Senator Simon's Questions:

1. What preliminary analysis can the Department provide as to the direction or extent of the Immigration Reform and Control Act's impacts on the U.S economy and the labor market?

As you know, the Immigration Reform and Control Act (IRCA) was signed into law on November 6, 1986. The major provisions of that Act have only recently gone into effect. For example, enforcement of employer sanctions began in June 1987 (with the first fines issued in early October 1987), and the 12-month application period for legalization began in May 1987.

While relevant data are scarce, we do know that INS apprehensions of illegal aliens were down in 1987, possibly signaling a decreasing flow of illegals into our labor market. In addition, anecdotal data have indicated that employer sanctions have resulted in increased wages for U.S. workers in some industries and areas previously dependent on illegal aliens.

However, while it is clear that IRCA's success in stemming illegal migrant flows will have significant economic and labor market impacts, we do not yet have sufficient data to analyze those effects. We expect to do so through the exhaustive studies and analyses that Congress has required under IRCA.

2. Can the Department ascertain which countries' immigrants would benefit on the whole and would be hurt on the whole by limiting the availability of professional visas to those individuals holding doctoral degrees?

No. The information necessary to answer this question is not available. Although INS collects and tabulates data on immigrant admissions by country of birth and major occupation group, it does not collect data on the educational level of immigrants. Thus, we do not know how many third preference (or other) immigrants currently hold doctoral degrees. In addition to these data, one would also need to know (1) the numbers and percentages of each country's population holding doctoral degrees and (2) the demand for immigration to the United States among these populations, in order to gain some idea of how immigration from each country might be affected by this requirement.

3. What would be the labor market impact of narrowing the availability of professional visas?

As we have already testified, the admission of more highly skilled immigrants would seem to fit with future U.S. labor force needs. However, this is something that the Department would need to study more closely and with full consideration of the demographics of our own labor force.

4. Does the Department have any view on how the 50,000 independent category visas should be allocated among applicants who score over 70 points? Should preference be given to those who attain over 100 points? Should preference be given to persons from adversely affected countries?

The Department of Labor agrees that, should an immigrant point system be established, it is important to consider the appropriate allocation of visas under that system. However, we have serious, fundamental concerns--outlined in our testimony--regarding the independent nonpreference category that S. 1611 would create. It would therefore be inappropriate for the Department to recommend a method of allocating visas among aliens qualifying under this system.

With regard to the proposed granting of 30 units of assessment to natives of countries adversely affected by the 1965 Amendments, the Department of Labor has serious reservations about any changes in U.S. immigration policy that would move us away from our current uniform treatment of persons from all nations and back to the pre-1965 ethnocentric system for selecting immigrants.

5. How would the Department ascertain whether an individual's U.S. job offer is bona fide?

Under S. 1611, the Department of Labor would be responsible for assigning units of assessment to intending nonpreference immigrants with regard to: (1) extent of vocational preparation; (2) extent of skills needed in the U.S.; and (3) extent of work experience relating to these skills. However, the bill, as drafted, provides no specific role for the Department of Labor with regard to the application of the prearranged employment criterion. Further, as we have stated previously, these nonpreference immigrants would be exempt from the labor certification requirement through which the Labor Department screens U.S. job offers for all other immigrant workers for U.S. worker availability and adverse impact.

6. On page 7 of your testimony, you indicate that the requirement of increased skill levels appears to be in line with future U.S. labor force needs. Is the 30 point preference for adversely affected countries necessary to advance U.S. labor force needs?

— No. There is no guarantee that nationals of adversely affected countries would fulfill U.S. labor force needs any better than nationals of any other country. In fact, because 30 preference points (the highest number of points accorded for any single criterion) are given to persons from adversely affected countries, the mere combination of (1) the correct age, (2) a bachelor's degree, (3) fluency in English, and (4) being a native of an adversely affected country would qualify millions of aliens as nonpreference independent immigrants. Thus, it is possible that large numbers of relatively unskilled workers from these countries--workers who would compete with our most disadvantaged native workers--would qualify easily for admission under this system, while highly skilled workers from other countries would have difficulty qualifying.

7. On page 8 of your testimony, you state that "the Department has serious concerns about any proposal to admit nonpreference aliens without labor certification. S. 1611 would leave American workers vulnerable to displacement and/or a deterioration of their wages and working conditions." How would S. 1611 affect the domestic labor force?

As you know, S. 1611 would increase numerically restricted immigration for other than family reunification purposes from 54,000 to 104,000 annually. These additional immigrants would not be admitted to fill a specific labor market need nor would they be required to have exceptional abilities. Further, unlike all other immigrant workers, the admission of these 50,000 additional immigrants annually would not be conditioned on government screening for U.S. worker availability and adverse impact on U.S. wages and working conditions.

Instead, aliens could qualify as nonpreference independent immigrants on the basis of neither the labor force needs of this country nor family reunification. For example, as stated previously, the mere combination of (1) the correct age, (2) a bachelor's degree, (3) fluency in English, and (4) being a native of an adversely affected country would qualify millions of aliens as nonpreference independent immigrants.

Even if aliens qualify for nonpreference status on the basis of criteria that appear intended to meet U.S. labor force needs, there is nothing to prevent those aliens from displacing U.S. workers. For example, there is no requirement that an alien receiving points for having skills needed in the U.S.

seek a job that would use those skills. Nor is there any requirement that points be given only for pre-arranged employment in occupations for which there is a shortage of U.S. workers.

In short, while we do not know what the precise effects of S. 1611 on the U.S. labor market will be, it is clear that under the proposed nonpreference independent immigrant category, large numbers of aliens could be admitted, neither to join their families nor to fill jobs for which U.S. workers have been found to be unavailable.

8. On page 9 of your testimony, you mention the "potential for fraud inherent in the pre-arranged employment criteria." What steps does the Department envision taking to combat this potential should S. 1611 be approved as drafted?

See #5, which addresses this issue.

9. On what basis would the Department assign points for the criteria mentioned at the top of page 10 of your testimony?

As we have stated before, the Department has serious concerns regarding the entire nonpreference independent immigrant system established under S. 1611. As regards the Labor Department's assigning points for certain specified criteria, we are concerned that the considerable increase in workload that would result from this requirement would be extremely staff intensive and costly, and without offsetting benefits to the U.S. (This seems particularly likely when one realizes that the potential pool of applicants for this category ranges into the millions.)

The Department would need to give further study to the issue of how to assign these points should S. 1611 be enacted as drafted.

Senator **Kennedy**. Let me ask Mr. Everson, does legal immigration relieve pressures for illegal immigration?

Mr. **Everson**. Well, I think you know that right now the ceilings of 20,000 for the individual countries does not address the demand that is out there in those countries. That is why you have, clearly, the long lines in some instances, in Mexico, the Philippines, and others.

So that to a great degree, if you have an effective legal system of immigration, I think you will satisfy that demand now that you have the sanctions that reduce the magnet on the illegal side.

But our comment is that you have to have a workable system on the legal side; otherwise if the lines, as Mr. Ogden says, get so long, there is a disincentive to participate, if you will, when you know that you will not have a chance of your number coming up for 10, 20, 30 years.

Senator **Kennedy**. That is what happens at the present time, isn't it?

Mr. **Everson**. I think to some degree that is correct.

Senator **Kennedy**. You talked a little bit about the second preference. We increase the visa numbers for the second preference, for the spouses and minor children of legal permanent residents. What effect will that increase have on the existing backlog, and which groups would benefit most from that change?

Mr. **Everson**. I will make a general comment, and perhaps then Mr. Ogden. I think that that will be a help. But once again, you have not provided relief on that narrow door of 20,000 through which many categories of the high-demand countries must enter. So that you will have long lines which, in the case, say, of the Mexicans, presumably, these individuals would have long since been citizens before they would have, had they stayed permanent residents, been eligible.

Mr. **Ogden**. Mr. Chairman, we estimate that under the provisions in this bill for second preference, it is likely that it would become current in the short term for most countries, except for the oversubscribed countries, Mexico, the Philippines, and the others. At the same time, in the absence of 202(e), there would be no visas available in the lower preferences for those oversubscribed countries because they would all be taken by the first and second preferences. I say in the short-term; of course, the workings of the amnesty program and the eventual larger pool of people who might be applying could possibly create another backlog in the future, despite the increase in numbers.

Senator **Kennedy**. Yes. That is really the very significant open question, of those individuals who receive amnesty, how many of those are going to have their families join them. Do you have any way of making any judgment about that now, based upon your experience?

Mr. **Ogden**. Mr. Chairman, yes. At this point, since most of the countries from which they are coming are oversubscribed when they become permanent residents, they will merely be adding to the backlog.

Toward the mid-nineties, as they become citizens, they will be moving into a position where they can apply for their relatives as immediate relatives outside numerical limitations, and we anticipate that there could be a large jump in the immediate relative categories beginning in the mid-nineties.

Mr. **Everson**. Just to add to that, approximately two-thirds, almost 70 percent, of the applicants for the legalization program are Mexicans.

Senator **Kennedy**. Mr. Ogden, last year with the implementation of the NP–5 Program, that is, when 10,000 visas became available to natives of countries adversely affected by the enactment of the 1965 act, the State Department determined which countries those were. Could you tell us how that determination was made, and could you name some of the countries?

Mr. **Ogden**. Yes, Mr. Chairman, I will be happy to give you a quick oral summary of how we did it, and I have a written submission that I would make available for you as part of the record.

Senator **Kennedy**. Yes, we will make that a part of the record. Fine.

Mr. **Ogden**. Essentially, based on the statistics available, we determined the average annual immigration from each country in the world and each dependent area in the world between 1953 and 1965, when the 1952 act was in effect; and then we did the same thing from 1966 up to the latest full-year figures we had available. And when we saw that average annual admissions had declined in the post-1965 period, we determined that that was an adversely affected country. There were 36 countries or dependent areas that were included in that list from all regions of the world, primarily Europe, but also Latin America, Asia, even Oceania. I believe New Caledonia came out as an adversely affected country.

I might add, too, that this procedure has been tested twice in court and survived. The judge determined that it was a rational basis on which to proceed.

Senator **Kennedy**. Mr. Hankin, with regard to the concern about the displacement of American workers, I like to believe that I pursue the interests of American workers. But it seems to me we have worked out provisions in here that emphasize education, emphasize skill, training, and the total number we are talking about is only 50,000. It is difficult for me to get terribly aroused that we are going to see much job displacement or a threat to American jobs.

Mr. **Hankin**. We are not aroused by——

Senator **Kennedy**. What we are hoping is that with those skills, they will increase employment for others. That is certainly what we hoped would be; if we get people who are educated and skilled and have these other qualities and characteristics, we hope that it would increase employment.

Mr. **Hankin**. I think we share the same objectives that the Senator does as concerns the work force, and we raised some of our concerns with the view that these would be things we could work together on because of those shared objectives.

The 50,000 number is not what aroused our concern. It is the method by which immigrants this new non-preference independent category would be admitted under the bill. And I can go into that in a little bit of detail here, if you want.

There is a removal of——

Senator **Kennedy**. Well, why don't we pursue it with you? We will have some time, and maybe we can go over that and see what the concerns are.

Mr. **Hankin**. Yes, sir.

Senator **Kennedy**. Okay. Thank you very much, gentlemen.

[The following information was subsequently received for the record:]

NONPREFERENCE IMMIGRANT VISA AVAILABILITY UNDER SECTION 314 OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986: DETERMINATION OF AREAS "ADVERSELY AFFECTED" BY THE ENACTMENT OF PUBLIC LAW 89-236

Section 314 of the Immigration Reform and Control Act of 1986 makes available 5,000 visa numbers in each of fiscal years 1987 and 1988 to nonpreference immigrants, with the proviso that the Secretary of State shall first make such visa numbers available to qualified immigrants who are natives of foreign states from which immigration to the United States was adversely affected by the enactment of P.L. 89-236, the Act of October 3, 1965 which revised the basis of legal immigration to the United States.

The Department of State defined by regulation the term "adversely affected" countries as those whose average annual rate of immigration to the United States from July 1, 1966 to September 30, 1985 was less than their average annual rate of immigration during the period from July 1, 1953 to June 30, 1965. The average annual rate of immigration during each of the periods mentioned above was determined by totaling the number of natives of each country who were admitted to the United States for permanent residence for each such period, and dividing each total by the number of fiscal years in the respective period. The figures on annual immigrant admissions used for these calculations were obtained from standard tables prepared by the Statistical Analysis Branch of the Immigration and Natuaralization Service's Central Office, and are available upon request from that office.

The formula described above appeared most appropriate since:

1. By using total admission figures, as opposed to numerically limited admissions only, the possible adverse effects of the 120,000 ceiling imposed on Western Hemisphere immigration by P.L. 89-236 could be considered; previously, there had been no numerical limit on Western Hemisphere immigration.
2. Averages of relatively long measuring periods, rather than any single year's figure, which could be aberrational, provided more reliable statistical data as they reflect patterns over time.
3. The measuring periods selected represent, respectively, all full fiscal years during which the national origins quota system originally in the Immigration and Nationality Act of 1952 was in effect, and all full fiscal years subsequent to P.L. 89-236 of 1965 for which final figures were available when the calculations were made in 1986.

Dependent areas were treated as entities separate from the governing countries to give a truer picture of the actual effect of P.L. 89-236 on each area, and because P.L. 89-236 increased the dependent area numerical limitation from 100 to 200; this limit was subsequently increased further by other legislation.

In instances where past INS figures of immigrants admitted from two or more countries were consolidated because of their political status or because of the United States Government's position at the time on certain geographic entities, such consolidated figures were prorated on a basis proportional to the populations of the countries concerned.

The list of "adversely affected" areas identified by this formula is attached.

NONPREFERENCE IMMIGRANT VISA AVAILABILITY UNDER SECTION 314 OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986: IDENTIFICATION OF ADVERSELY AFFECTED AREAS

ADVERSELY AFFECTED CHARGEABILITY AREA	ANNUAL AVERAGE OF IMMIGRANTS ADMITTED BY COUNTRY OF BIRTH July 1, 1953 to June 30, 1965	ANNUAL AVERAGE OF IMMIGRANTS ADMITTED BY COUNTRY OF BIRTH July 1, 1966 to Sept. 30, 1985	POST PL 89-236 DECREASE IN ANNUAL AVERAGE
AFRICA			
Algeria 1/	149	132	17
Tunisia 1/	132	93	39
ASIA			
Indonesia	1,582	766	816
Japan	5,028	4,466	562
EUROPE			
Albania	205	148	57
Austria	2,294	554	1,740
Belgium	1,172	471	701
Czechoslovakia	2,234	1,361	873
Denmark2/	1,400	555	845
Estonia	214	29	185
Finland	683	365	318
France2/	3,983	2,038	1,945
German Democratic Republic	6,515	1,398	5,117
Germany, Federal Republic of	24,510	6,472	18,038
Gibraltar	18	12	6
Great Britain & No. Ireland2/	23,835	14,441	9,394
Hungary	4,995	1,190	3,805
Iceland	164	145	19
Ireland	6,853	1,500	5,353
Italy	20,456	12,818	7,638
Latvia	436	68	368
Liechtenstein	10	5	5
Lithuania	560	79	481
Luxembourg	91	33	58
Monaco	13	10	3
Netherlands2/	4,696	1,217	3,479
Norway	2,359	501	1,858
Poland3/	8,189	5,170	3,019
San Marino	103	19	84
Sweden	2,017	820	1,197
Switzerland	1,801	797	1,004
NORTH AMERICA			
Bermuda	195	186	9
Canada	30,986	13,188	17,798
Guadaloupe	79	61	18
OCEANIA			
New Caledonia	7	3	4
SOUTH AMERICA			
Argentina	3,097	2,531	566

1/France sub-quota during part of July 1, 1953 to June 30, 1965 period.
2/Mother country only.
3/Includes Danzig.

NOTES: The above figures are based on INS records of total immigrants admitted (all categories) by country of birth. FY 1966 has not been included in calculations since PL 89-236 took effect midway through that year.

Figures for dependent areas have been calculated separately from those of the mother country.

In instances where past figures of immigrants admitted for two or more countries were consolidated, these figures have been prorated in proportion to population.

Senator **Kennedy**. We now welcome our next panel. This panel brings a great deal of expertise to the issue and have counseled this committee for many years.

First, we welcome Professor Lawrence Fuchs, of Brandeis. Larry served as staff director to Father Ted Hesburgh as Chairman of the Select Commission on Immigration and Refugee Policy. His testimony today will provide a link between the landmark work of that Commission and the proposals for immigration reform that are still before us.

Second, we welcome Doris Meissner, now associated with the Carnegie Endowment for International Peace, who has extensive experience with immigration and refugee issues from her service with President Ford's Immigration Task Force, to work in President Carter's Department of Justice, to her more recent post as an Associate Commissioner of the Immigration and Naturalization Service.

Third, we welcome Warren Leiden, who is executive director of the American Immigration Lawyers Association, a group which has played such a constructive and thoughtful role in our review of immigration reform.

Finally, we welcome a friend of the committee, Gary Rubin, who is currently with the American Jewish Committee, and has a distinguished record of work in the immigration field.

We look forward to all of your testimony, and we will start with Professor Fuchs. We are glad to have you here, not only as an expert on the immigration policy, but as a constituent and a friend. Professor.

STATEMENT OF A PANEL INCLUDING: PROFESSOR LAWRENCE FUCHS, BRANDEIS UNIVERSITY, FORMER STAFF DIRECTOR, SELECT COMMITTEE ON IMMIGRATION AND REFUGEE POLICY, BOSTON, MA; DORIS M. MEISSNER, SENIOR ASSOCIATE, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, FORMER EXECUTIVE ASSOCIATE COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, WASHINGTON, DC; WARREN LEIDEN, EXECUTIVE DIRECTOR, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, WASHINGTON, DC; AND GARY E. RUBIN, PROGRAM DIRECTOR, AMERICAN JEWISH COMMITTEE, AND EXPERT ON IMMIGRATION, NEW YORK, NY

Professor **Fuchs**. Thank you. It is always a pleasure to work with you, Seantor Kennedy, and with Senator Simpson, too. Of course, you were two of the most important members of the Select Commission. And I just want to, as a citizen, pay tribute to the work that both of you have done.

Senator Kennedy is really the principal author of the first and only really comprehensive refugee act that we have had in this country, and it has stood the test of time, the Refugee Act of 1980; and Senator Simpson, of course, was the stalwart person who stood fast to see that we did get an Immigration Reform and Control Act in 1986.

I also want to mention before I go ahead with the substance that since the Select Commission's work has been referred to many times, that sitting in this room today is a woman who is a senior research analyst at the Immigration and Naturalization Service who served on the Select Commission staff, detailed there by the INS, and who headed the Research Task Force on all aspects of legal immigration, Lisa Roney. So much of the work that is referred to really stems from the hard work that she did.

The Commission has been referred to, and there are five Members sitting in the U.S. Congress today who were on the Select Commission, and there are many links to S. 1611 which come from the Commission's work. And I would like, Mr. Chairman, to recommend to you and to Senator Simpson that pages 87 to 144, which really amounts to about 15 or 20 printed pages at the most, be put into the record from the final report of the Select Commission, because that would lay out for the record again the fundamental recommendations of the Commission with respect to lawful immigration.

So Mr. Chairman, I would recommend that those pages that deal with lawful immigration, which might add up to about 10 or 15 printed pages, from the final recommendations of the Select Commission dealing with lawful immigration be put in the record. I think that would be a useful basis and backdrop for people to have who follow the record.

Now, I have a written statement, which I am not going to read, but I have submitted it to staff.

Senator KENNEDY. All the statements will be included in the record in their entirety.

Professor FUCHS. With respect to overall numbers, there is no question that your approach is very cautious and modest. We thought at the Select Commission that the approach which we took was cautious and modest, but it was somwhat more expansive than yours. The vast majority of the Commission was in agreement, the Congressional Members as well as the others, that there should be an expansion, and largely in the independent category.

You may remember at that time that instead of recommending an addition of 50,000—and this was in 1980—the recommendation was to have 80,000 added in addition to the 100,000 for 5 years to clear the backlogs, because it was important to relate the problem of the existing backlog to the issuance of visas under the new, independent category.

We also would have had an expansion numerically of the exempt family category. You may remember that the adult, unmarried sons and daughters were to be put in the numerically exempt category. Also, by the way, Representative McClory made a suggestion which the Commission recommended, that the grandparents of U.S. citizens also be put in the exempt category, although they would have had limited petitioning rights.

But what I am getting at here is that there was tremendous confidence in the character, the nature, of recent legal immigration in the country. The research evidence which was presented to the Commission has only been reinforced since that time. The research showed that lawfully admitted immigrants underuse the welfare system, underuse the health system; the children of lawfully admitted immigrants, as the research showed, do better at school than our children do, those of us who are native-born Americans; they report fewer health problems.

So the research shows that under our system of screening immigrants, as we do with our 33 exclusions, and of selecting them as we do through our preference systems, that they are making an extraordinary contribution of the United States disproportionate to their numbers.

Senator **Kennedy**. They also pay taxes.

Professor **Fuchs**. And of course they pay taxes.

Now, the evidence also continues to show a remarkable contribution by immigrants under our present system—because after all, we are talking about a fairly careful selection in our system; we are not talking about the 18th Century, with some convicts coming in, or the 19th, with a lot of paupers——

Senator **Kennedy**. You had better be careful now, with those old immigrants coming in.

Professor **Fuchs**. Well, my illiterate, 15-year-old orphaned grandmother certainly would have been excluded under a number of exclusions under the present system.

So the present system is bringing to us immigrants who make a contribution way out of proportion to their numbers, at a time when we have a very low fertility rate and expect to have that on into the future.

So those factors led us to feel confident, even though we were recommending a legalization program, as you did—and Senator Simpson, I should say "we" since it was the Commissioners who did.

The Commission also recommended facilitating the second preference. And I think a key point was made just a moment ago here by two witnesses. It lifted the country ceilings from the second preference, and that was very important, because while the authors of S. 1611 clearly indicate that they believe second preference immigration should be increased, and they believe that in shifting the categories or the preferences within the family reunification system, that should be done, the bill does not eliminate the country ceilings; it keeps them with respect to second preference.

Now, of course, the Commission recommended that we maintain the world ceiling for second preference, so you would not get an overall expansion in numbers, but you would have more flexibility within the system, and not these very strong backlogs in some countries, holding back immigration from those countries because the per-country ceilings apply to second preference.

Now, with respect to this independent immigration, we looked very carefully, the Commissioners did, staff did, at the question of immigration goals. I remember Doris Meissner, one of the very first questions she asked—she was at the Justice Department at that time—she came to a meeting of the Select Commission and the staff and she asked, "What are your goals? What are the goals of immigration?" And apart from family reunification, and next after that came the acceptance of refugees who then would be eligible, so people who were really fleeing persecution and oppression would be eligible to adjust their status to immigration—apart from those what are the goals?

Well, the goals were to enhance the strength of the United States of America in a number of ways—to increase its economic strength, consistent with labor market protection; to increase its cultural strength and cultural diversity; to increase the power of its scientific, intellectual and cultural communities, consistent with national unity. These were the goals. And if you had these as goals, it made sense to lay out a separate channel for immigration and not have people who were independent of family ties in the same system of those who were coming because of family ties.

Now, there were members of the Commission—Senator Simpson was among them, and certainly, Benjamin Civiletti and Father Hesburgh—who felt that our system was too driven by family reunification to the detriment of those who were the so-called "seed immigrants" or the independent immigrants who would come and make a contribution, because they were immigrants, as history showed and research shows, who were highly self-selected; they had enormous drive and motivation, often overcoming tremendous obstacles to get here—at least historically that is true.

So there was this desire to set that up, and that has been followed consistently in S. 1611, to get away from the heavy reliance on family reunification.

Third and sixth preference, the Commission said, and you say in S. 1611, are not enough, and the system is not flexible enough; hence, the creation of the separate category of independent immigrants. But then, the question always was how do you pick the independent immigrants. First the question is what should the number be. Well, your number is modest, it is low. I think it is unnecessarily low. It is not as good for the U.S.A. as it would be if it were somewhat higher, but, as Senator Simpson has pointed out, there is always the political constraints on any large new number, and there are the cost constaints that the State Department has in the near term, which get paid back, of course, in the long term.

But you have said 50,000. Now, you have recommended a point system for picking the independent immigrants. Well, the Select Commission had a very hard time with that. There were a number of consultations. You may remember, Senator Kennedy, that there were only two votes at that time out of the 16 for a point system, whereas all commissioners were for setting up the independent category, and I think it was 14-to-2 for increasing the numbers.

But trouble with the point system had to do partly with difficulty in administration, but it also had to do with the fact that it is so darned difficult to get agreement, political consensus, on how to allocate the points.

Now, I give as a case, an example, the concept of adversely affected countries. I know it is in the act of 1987, and I know it came from the distinguished Congressman Donnelly, and I know it is in S. 1611. But apart from the administrative difficulties of that concept—that is to say, 1 million people writing in the the State Department—there is the problem of it conceptually, because countries do not immigrate; persons immigrate. So that the individual Filipino or Filipina who is now standing on line around the Embassy in Manila, waiting to immigrate for third or sixth preference, because he or she does not have any family ties, is really very much in the same pickle that the would be independent immigrant in Dublin, in Ireland, is in. They are people who are really cut off because they do not have the possibility of entry through family ties.

Filipinos, to continue that example, have had tremendous backlogs in third preference and sixth preference. So you have actually have more folks who are adversely affected—individuals who are adversely affected—who happen to be Filipinos, than you do, say, in The Netherlands, or in Sweden, or in Ireland or in Italy.

So there is no question that this is going to be a problem. If you do go with the point system, and you gave more points for speaking English, let us say, or you gave more points for a job offer or for education, if that is what you determine to do, you would get much the same effect that you want without introducing once again into our immigration law a principle of affirmative action for certain nationalities, which, I think, is something that one has to think extremely hard about. Although I must say I admire tremendously the courage and the intelligence that went into designing the point system in of S. 1611, I think that particular concept which came out of the Donnelly proposal with respect to the bill you passed last year is a flawed concept.

So I would consider looking back again to the two options which the Select Commission recommended by given careful consideration for the choosing of independent immigrants. The first was to streamline and expand the current labor certification procedures, and to require the prospective immigrant to have a job offer. That was one system—much simpler to administer; and it is free of nationality considerations. One could give points for a job offer, as you do in the S. 1611 point system, and streamline the labor certification procedure, too. But if you do not have a point system, you might have that as a simple alternative.

Another one, which I personally am more fond of, would allow independent immigration without requiring a job offer and allow the immigrant to come in, unless the Secretary of Labor has certified that there are sufficient workers in that place and in that category of work. This is what was done before 1965.

Secretary Marshall on our Commission did not like that, because it meant a little looser labor market, but it is a simpler way to do it. It has the great advantage, by the way, of getting to the United States people who are highly self-selected even though they may not have the highest skills and the highest education.

There are problems with each of these methods of selection, but I suggest to you that when you revisit and think through again S. 1611 as you go through this procedure and process over the year, and perhaps two years to come, that you look again at the Select Commission recommendations for selecting independent immigrants, or the thought that went into it, and think of the alternatives to the point system. If you keep the point system, I suggest that you think of the alternatives to the concept of the adversely affected countries.

I conclude now, probably having talked too long, just with congratulations again for the basic thrust of this—the establishing of an independent category; the recognition that independent immigrants have much to contribute to the United States in addition to those who come through family ties; the shifting of the balance a little bit away form what Benjamin Civiletti, the Attorney General, I think, called a nepotistically reliant system—I think that is a little harsh—but shifting the balance away a little bit; and of course, your willingness to recognize that even though popular wisdom, public opinion, often says, okay, we have had enough immigrants, it is about enough, now is the time to stop, that leadership requires that you point out to the American people repeatedly that the evidence, the research, the historical experience confirm that we in the United States do well by doing good in this kind of policy.

Thank you very much, Mr. Chairman. It is always a pleasure.

Senator KENNEDY. Thank you very much, Professor.

[Prepared statement, along with additional material, follow:]

Testimony by Lawrence H. Fuchs

S.1611 embraces many of the recommendations made by the United States Select Commission on Immigration and Refugee Policy to the Congress and the President on March 1, 1981. S.1611 would create a separate category of immigrants who come to the United States independent of family ties; it would increase worldwide immigration to the United States by slightly more than 50,000; it would make some changes in the preference system by which we admit immigrants with family ties in the United States; and it would create a method of selecting the additional 50,000 independent immigrants by a point system.

I will address each of these changes in the form of questions: Why create a separate channel for independent immigration and why increase the ratio of independent immigrants to those who come because of family ties? Is the increase of 50,000 appropriate? Why change family reunification preferences? and, Why adopt a point system to choose independent immigrants?

Expanded Independent Immigration

All Select Commissioners were sympathetic to the view that one major goal of U.S. immigration policy should be the reunification of families. But a majority of them held the view, as I do, that U.S. immigration policy had become imbalanced in support of that goal to the detriment of admitting persons who seek opportunity and have the drive, energy and ability to get to the United States independent of family ties. The Select Commission heard from historians, economists and others about the disproportionate contribution which such immigrants and their children and grandchildren have made and continue to make to the economic and cultural well being of the United States. The general explanation for this phenomenon is that such immigrants, being essentially self selected, are highly motivated to participate in American society, and, by seizing its opportunities, to contribute to it.

Given the weight of the testimony from economists, social scientists and others, the Select Commission concluded that it would be desirable to set up a channel of immigration distinct from the family reunification preferences. The Select Commissioners voted thirteen to two with one member not voting for such an independent category. Among those voting for the category were all eight members of the United States Congress, four from each branch, who served on the Select Commission.

S.1611 also contemplates the creation of a channel for independent immigration separate from the family reunification preferences and a slight shift in the ratio of independent immigrants to those who come to those who come to the United States on the basis of family ties. If one takes Fiscal Year 1985 for purposes of analysis -- a sensible thing to do since it is the last fiscal year for which we have accurate and complete figures -- we can see what the effect on the ratio would have been if S.1611 had been in operation that year.

In Fiscal Year 1985, 570,009 immigrants were admitted to the United States. Excluding those who adjusted their status from that of refugee and asylee, a total of 95,040, many of whom were admitted to the United States because of family ties in the first place, that leaves a total of 474,969 immigrants.

Of that number, only a total of 50,895 were admitted through the present preferences for independent immigrants, third and sixth. All of the rest, with only a small number of special exceptions, not worth calculating for our purposes here, were admitted on the basis of family ties. The percentage of independent immigrants admitted was 10.7.

If S.1611 had been in operation in Fiscal Year 1985 and all additional 50,000 immigrant visas assigned for independent immigration had been used, the total number of immigrants, not counting refugees, would have been 524,969, with 100,0895, or 19.2 percent, coming independent of family ties already in the United States, including the children and spouses of the principle immigrants.

Family reunification would still remain the major goal of U.S. immigration policy under S.1611, but the proportion of independent immigrants to family reunification immigrants, by increasing the latter category by 50,000, would help to shift the balance in a way thought to be desirable by a majority of the members of the Select Commission.

For those who see S.1611 as an abandonment of the U.S. policy of family reunification, I would reemphasize: the ratio of independent immigrants (including their spouses and children) to numerically restricted family reunification immigrants -- 104,000 to 270,000 -- still gives primary weight to the goal of family reunification, particularly when one considers that about 200,000 additional immigrants come in without numerical restriction because they are the immediate relatives of U.S. citizens and that a substantial portion of the approximately 100,000 refugees who have been adjusting their status each year to that of immigrant in the last several years were admitted to the United States in the first place because of family ties.

Is the Addition of 50,000 Immigrants Annually Warranted?

Although the Select Commission heard testimony ~~heard testimony~~ from persons who wanted to see the number of immigrants lowered in order to achieve negative population growth as quickly as possible, the weight of testimony from economists, social scientists and others was that given current U.S. fertility rates, it would be beneficial for the United States to increase the number of lawfully admitted immigrants through independent immigration for the reasons suggested above.

S.1611 stipulates an increase of 50,000. There is no magic optimum number, and it is certainly important to provide for periodic review of the total number, as is done in S.1611. But I have no hesitation in saying that the majority of immigrant historians, social scientists who work in this field, and economists would view an additional 50,000 visas annually as desirable under present conditions, an opinion which I definitely share. The major objections to such an addition would come from those who would like to see the United States get to negative population growth as soon as possible. Support for the addition would come generally from employers, various ethnic groups, and scientific, cultural and intellectual communities. I don't know what the view of organized labor is, but most representatives of organized labor are much more interested in seeing to it that illegal migration be curtailed effectively through a reliable system of employee eligibility linked to the new employer sanctions law than in whether or not we increase the total number of lawfully admitted immigrants by only 50,000 a year. Of course, if there is a downturn in the economy, one can expect that public opinion polls will show the American people generally to tend away from admitting more immigrants and towards restriction.

On the issue of population growth, the Select Commission never chose an ideal population goal, but staff calculations published in the staff report showed that under certain assumptions a net migration of about 500,000 would bring the United States to zero population growth with a population of 274,000,000 by the year 2050, with the population going down after that. These projections were based on certain assumptions about rates of emigration, refugee flows and the amount of permanent settlement resulting from illegal migration to the United States. Regardless of one's views on ideal population growth, given the high degree of selectivity in our present immigration system and the one proposed in this bill, it can be said safely that at the present time, the American people, in the aggregate, have much to gain by the addition of 50,000 immigrants under our numerically restricted system. After all, we are not talking about persons such as those who came in the seventeenth century as convicts or the much larger number of paupers who arrived in the eighteenth and twentieth centuries, persons who we now celebrate as part of our immigration tradition and who are the ancestors of some of us. We are talking about immigrants who are screened today by a very tight mesh of exclusions and, under S.1611, by a point system which favors highly educated and skilled immigrants.

The recommendations of the Select Commission actually called for a larger number of immigrants than contemplated by S.1611. Since a majority of the members of the Select Commission wanted not just to increase the ratio of independent immigrants to family reunification immigrants but to also increase the absolute number of second preference immigrants to be admitted to the United States without invading any of the other family reunification preferences, the final recommendation called for a limit of 350,000 numerically restricted immigrants as opposed to the present 270,000 and the 325,000 called for in S.1611. The Select Commission also recommended that an additional 100,000 visas be made available annually for the first five years in order to introduce the new system, reduce backlogs, and accommodate the heavy demands on family reunification which already existed and which were expected to increase under legalization.

Why Tinker with Family Reunification Preferences?

The Select Commission recommended some changes in the family reunification preference system, even as it recommended an increase in the total number of those who would be admitted via family ties. All sixteen Commissioners voted that the immigration of spouses and minor children and parents of U.S. citizens should continue to be exempt from numerical limitations.

In addition, fourteen of them voted that the immigration of unmarried sons and daughters of U.S. citizens should be exempt from numerical limitation, something not contemplated in S.1611. Also, under a motion by former Representative Robert McClory (R-Illinois), the Commission voted thirteen to three that grandparents of adult U.S. citizens should be admitted without numerical limitation, although it stipulated that they should have no petitioning rights until they acquired citizenship themselves.

S.1611 does not deal with grandparents of adult U.S. citizens at all, and it simply reduces the ceiling on the first preference for unmarried adult sons and daughters of U.S. citizens eligible to come to the United States from 54,000 to 32,000 annually, a realistic recognition of the fact that the total number of first preference immigrants from all countries in 1985 was only 9,319.

I prefer the Select Commission's recommendation with respect to adult unmarried sons and daughters because it would open up nearly another 10,000 visas under the numerically restricted system, increasing immigration altogether by almost that amount. But one must keep in mind that since the Select Commission made its recommendation, the total number of immigrants to come to the United States annually as spouses, minor children and parents of U.S. citizens has gone up between 1980 and 1985 from 151,131 to 198,143, and the total number of first preference immigrants has gone from 5,721 to the aforementioned 9,319. Given the rise in these numbers and the pressure which will be generated to increase the unrestricted category as a result of the legalization program, the authors of S.1611 are understandably less expansive than the Select Commission.

S.1611 contemplates a substantial increase in the number of second preference immigrants eligible to come in under the numerically restricted family reunification preference system. The ceiling on these spouses and unmarried sons and daughters of U.S. permanent resident aliens would go from 70,200 to 140,400 and be limited to spouses and unmarried children under twenty-one. Actually, the total number of immigrants admitted under second preference in the last five years has always been over 100,000 and was 114,997 in Fiscal 1985, the second highest total ever. The reason is that the unused preferences from first preference are dropped down to second preference. That would continue to happen under S.1611 and one might expect as many as 160,000 to be admitted instead of 115,000. This is certainly desirable public policy. It is not humane to separate the spouses and minor children of U.S. permanent resident aliens. And this is a point that is not made often enough: the reunification of families leads overall to better health, more productivity, and a stronger commitment to U.S. life in general by permanent resident aliens. In their final recommendations, ten Commissioners voted for the elimination of country ceilings with respect to the spouses and minor children of permanent resident aliens. Two of them voted to raise the country ceilings, and two voted to maintain the ceilings in the present law. The vote to eliminate the country ceilings for spouses and minor children of permanent resident aliens was totally nonpartisan, as was all of the work of the Select Commission, with the two Republican Senators, two Republican members of the House of Representatives, and the two Democratic Senators voting to eliminate the ceilings for this preference and two Democratic members of the House voting to raise them. Keep in mind that this was in 1980, when public opinion against immigration generally was considerably higher than it is now because of the pushout of Cubans from Mariel Harbor and great uncertainty both as to what would be done about illegal immigration and how recently arrived refugees would acculturate.

In the light of those facts, the provision to raise the ceiling for the second preference in S.1611 certainly seems prudent and modest. However, I am reminded that Secretary of Labor Marshall was one Commissioner who voted to maintain the world present ceiling on second preference, and he gave as one of his reasons that he believed that a special program should be enacted to enable the admission of spouses and minor children of undocumented aliens who qualify for legalization under the recommendation being offered by the Select Commission for legalization of undocumented aliens in order to help to bring an end to illegal migration. This priority is one which neither the Select Commission, the Congress, or the Immigration and Nationality Service has met head on.

S.1611 contemplates a slight change with respect to fourth preference, the immigration of married sons and daughters of U.S. citizens. It would reduce the number of visas available under current law from 27,000 to 21,600, a realistic cap when one considers that in 1985 the total number of fourth preference immigrants admitted was 18,460. The Select Commission did not tinker with fourth preference at all, but one Commissioner, Attorney General Benjamin Civiletti, who strongly favored the expansion of independent immigration, did not think that the immigration of married sons and daughters of U.S. citizens should be given preference at all within the numerically limited family reunification category.

By contemplating a substantial increase in second preference immigration, and by keeping the total world ceiling for family reunification immigrants at 216,000 under the four family reunification preferences, S.1611 had to lower numbers in other places in the family reunification system. In addition to doing so with fourth preference, it does so with respect to fifth preference, the brothers and sisters of adult U.S. citizens. S.1611 not only calls for reduced numbers in fifth preference, but it does so by changing the preference to exclude unmarried brothers and sisters.

That change was studied and debated at the Select Commission. In the end, nine members of the Commission, including Senator Kennedy, who subsequently changed his mind, as reflected in S.1611, voted to maintain present policy against seven Senators, who voted to admit only unmarried brothers and sisters as is contemplated in this bill. There were some Commissioners, such as Attorney General Benjamin Civiletti, who thought that the allocation of 24 percent of all numerically restricted immigration to brothers and sisters of U.S. citizens, including married brothers and sisters of U.S. citizens who had established families in other countries, restricted opportunities for person eligible under other preferences. They argued that the brothers and sisters category -- a degree of relationship fairly well removed from the original petitioners in some cases -- put exponential pressure on the whole system and was in a sense "nepotistic." On the other side were Commissioners who believed that in some cultures brothers and sisters were almost as important as spouses and children and that, in any case, no distinction should be made between married and unmarried brothers and sisters.

The total number of fifth preference immigrants has actually gone down between 1980 and 1985 from 90,167 to 70,481, but under S.1611 the fifth preference ceiling would be for 21,600 unmarried brothers and sisters.

I agree with the authors of S.1611 and with the seven Commissioners who maintained that including married brothers and sisters not only puts inordinate pressure on fifth preference, even to the detriment of unmarried brothers and sisters, but that the overall number for this category of relative is presently too high. It is true that brothers and sisters are more important in some cultures than others, and one does not have to go to Asia to recognize how important extended family is. In southern Italy, brothers and sisters are tremendously important. Jewish-Americans, like Italian-Americans, have always supported this particular preference. But the question here is not just whether or not it is desirable to bring in married brothers and sisters of U.S. citizens, or cousins for that matter, but whether, given a fixed number of visas, it is more important to provide for the reunification of immediate families of U.S. permanent resident aliens. The aliens don't vote yet; U.S. citizens do. But it is much sounder public policy to reunify immediate relatives than married brothers and sisters.

How to Choose Independent Immigrants

S.1611 would continue the third and sixth preferences, but it would eliminate unskilled workers from sixth preference. It would continue to screen the principle beneficiaries under third and sixth preference by the test of labor certification. The Select Commission made no recommendation to eliminate unskilled workers from sixth preference. In fact, there was a great deal of discussion by Commissioners in favor of expanding nonpreference immigrants so as to permit relatively unskilled workers to emigrate to the United States as independent immigrants. In reality, there is at least as much a demand for needed unskilled workers as skilled workers in the United States. The numbers under sixth preference are inconsequential. But consideration should be given to thinking once more about the inclusion of needed unskilled workers as a category within sixth preference, particularly since the point system contemplated for choosing the nonpreference independent immigrants in S.1611 strongly favors persons with education and skill.

While the Select Commission agreed on the importance of creating a substantial nonpreference, independent immigrant category, it could not achieve consensus on how independent immigrants should be selected. Only two of sixteen Commissioners voted for a method of selection that would embrace a point system of multiple criteria such as is contemplated by S.1611 Seven of them voted to admit those immigrants according to a revised labor certification and job offer system which would make it easier for them to immigrate than the present labor certification process.

S.1611 would establish 50,000 new visa numbers for persons who would not require individual labor certification. Seven of the Commissioners would have made it easier for independent immigrants to come by not requiring a particular job offer but revising the labor certification procedure so that independents would be admissible unless they sought work in labor categories specifically excluded by the Secretary of Labor on the ground that there are a sufficient number of such workers in the United States already.

The point system received a great deal of attention from the staff. One of the first papers written by the co-directors of research called for a point system to choose independent immigrants. There were several consultations with experts which touched upon the issue of independent immigration and how to choose independents. At one consultation, the staff and the Select Commission's advisory group met with several representatives of key government agencies and over a half dozen consulting economists on July 15, 1980, to analyze in some detail the methods for choosing independent immigrants. There was strong agreement on the value of the category of independent immigrants, but not on the method for choosing them.

Several pitfalls were enunciated with respect to a job offer system. First, most of the requests for visas would come from those already in the United State, frequently students, who are known by or are already working for employers, as is true with present immigration petitions based on third and sixth preference; second, prevailing kinship and other international networks would admit those with existing strong ties, reinforcing patterns of migration rather than opening up opportunities for new immigrants in countries where people do not have the basis for family reunification; third, a job offer system probably would encourage some fraud through the creation of dummy corporations and might give undue advantage to large corporations who already have an international recruiting program; and fourth, it might put too much initiative in the hands of employers who wish to avoid hiring American labor.

An open system, or a first-come, first-served basis of selecting immigrants, was discussed because it has the obvious advantage of favoring self-selected immigrants without involving the U.S. in trying to fine tune just what it needs in the way of immigration at any one time, an extremely difficult thing to do. Another possibility discussed was to have a lottery of all those who were registered after a certain cutoff date. The point system came in for most discussion, but there was no agreement on the weighting of characteristics for awarding admission. It was argued that it was extremely difficult to weight those characteristics which traditionally have been thought to be the most desirable, such as initiative, resourcefulness and adaptability. But there were those who believe, as do the authors of S.1611, that points could be given for skills, English language ability, and other characteristics which would be likely to produce a highly desirable group of independent or seed immigrants among the 50,000 admitted to the United States annually.

I admire the courage of the authors of S.1611 in coming up with a point system based upon ten possible factors. Senator Simpson was one of the two members of the Select Commission who favored a point system in selecting independent immigrants, but since he was only one of two, we never got down to the business of designing a system for it.

I think the point system outlined in S.1611 probably is sound in its mix of factors except for the one I will mention in less than a minute. The range of factors is broad enough to make it possible for a considerable number of persons from all countries to apply. It obviously tilts the nonpreference category of immigrants to those with work skills, education, and who are in their in their most productive years and know some English. By giving 10 points out of a possible total of 147, with 70 needed to apply, to those who speak and read English, the system is being sensible. Adjustment to the United States is going to be much easier for those who speak and read English.

There is only one factor among the ten listed which is highly questionable. It goes under the name "adversely affected country," meaning those 36 countries on the current list as determined by the Department of State to have been adversely affected by the enactment of the amendments to the Immigration and Nationality Act in 1965. The assignment of thirty points to persons who come from such countries is likely to make it easier for persons from such countries as Ireland and the Netherlands to immigrate to the United States than would otherwise be the case.

But by retaining the numerical limitation of 20,000 visas per country, the authors of S.1611 would be xtending a kind of affirmative action for persons from European and other countries where a disproportionate number of people do not have the basis for family reunification. But if one looks at the backlogs for third and sixth preference and the old pressures for nonpreference immigration, it is clear that in terms of sheer numbers the pressures for independent immigration come from those countries which already send 20,000 numerically restricted immigrants to the United States.

It is important to keep in mind that it is not countries that immigrate but human beings. The Filipino who cannot immigrate except through independent immigration is as much disfavored by the present system which is based so heavily on family reunification as is the man in Sweden. One could make the case that by establishing ceilings of 20,000 per country regardless of population or of pressures to migrate to the United States the amendments adopted in 1965 adversely affected the persons in countries with large numbers of present or potential immigrant applications. If one qualifies under the preference system -- whatever categories of preference exist or whether or not there is a separate category of independent immigrants -- in a country with large backlogs it is more difficult to gain admission to the United States than it is for those who come from countries with relatively slight backlogs.

If we are going to a point system for choosing nonpreference immigrants, I would drop the category of adversely affected country. I don't think it is a sound concept or principle to advance in immigration policy. It is not only an ambiguous concept but it is one without boundaries. The new nonpreference category should open up the possibility of immigrating to persons in Ireland, India, Nigeria, and other countries where a disproportionate number of persons are without family ties in the United States. But we should seek them as immigrants because they are desirable for their attributes as persons and not because of their national or ethnic backgrounds.

That is my view. I respect those who disagree with it, and I wish this committee success in creating a category of independent immigration including a group of 50,000 nonpreference immigrants and in establishing a sound method for selecting those immigrants. I particularly applaud the authors of S.1611 for recognizing that continuing immigration to the United States is a source of great strength for this country, and I appreciate your having asked me to give my views along with some historical background on the work of the Select Commission.

U.S. Immigration Policy and the National Interest

THE FINAL REPORT AND RECOMMENDATIONS OF
THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY
WITH SUPPLEMENTAL VIEWS BY COMMISSIONERS
MARCH 1, 1981

Submitted to the Congress and the President of the United States
Pursuant to Public Law 95-412

SECTION III. THE ADMISSION OF IMMIGRANTS

Introduction

Today's immigrant selection system has evolved from two centuries of policies, as indicated in Table 3. For the first century, immigration was unrestricted, encouraging all to come and build a new nation. This open policy was only slightly tempered in the late nineteenth century by a series of successive bars placed on the immigration of certain groups of persons. The trend toward a more restrictive policy culminated in the national origins quota system of the 1920s which governed immigrant admissions for the next four decades. Since 1965, however, when differential national quotas were abolished, U.S. immigration policy has evolved increasingly toward a system in which provisions apply equally to prospective immigrants regardless of place of birth (see Appendix D, Evolution of Key Provisions Relating to Immigration).

Using the criteria of fairness and promotion of the national interest, the Commission has evaluated the current immigration admission system and has found that many of the criticisms concerning it are well-founded. Although the existing system provides for the reunification of families--some without numerical restriction--and for the immigration of certain needed workers while still protecting the U.S. labor market, both goals

TABLE 3

OUTLINE OF U.S. IMMIGRATION POLICY, 1783-1980

1783	George Washington proclaims that the "bosom of the America is open to receive not only the opulent and respectable stranger, but the oppressed and persecuted of all nations and religions, whom we shall welcome to a participation of all our rights and privileges..."
1819	For the first time, the U.S. government begins to count immigrants.
1864	Congress passes law legalizing importing of contract laborers.
1875	The first federal restriction on immigration prohibits prostitutes and convicts.
1882	Congress curbs Chinese immigration.
	Congress excludes convicts, lunatics, idiots and persons likely to become public charges, and places a head tax on each immigrant.
1885	Legislation prohibits the admission of contract laborers.
1891	Ellis Island opened as immigrant processing center.
1903	List of excluded immigrants expands to include polygamists and political radicals such as anarchists.
1906	Naturalization Act makes knowledge of English a requirement.
1907	Congress establishes Dillingham Immigration Commission.
	Head tax on immigrants is increased; added to the excluded list are those with physical or mental defects that may affect their ability to earn a living, those with tuberculosis and children unaccompanied by parents.
	Gentlemen's agreement between U.S. and Japan restricts Japanese immigration.
1917	Congress requires literacy in some language for those immigrants over 16 years of age, except in cases of religious persecution, and bans virtually all immigration from Asia.
1921	Quotas are established limiting the number of immigrants of each nationality to three percent of the number of foreign-born persons of that nationality living in the United States in 1910. Limit on European immigration set at about 350,000.
1924	National Origins Law (Johnson-Reed Act) sets temporary annual quotas at two percent of nationality's U.S. population as determined in 1890 census and sets an upward limit of 150,000 upon immigration in any one year from non-Western Hemisphere countries.
1929	Quotas of 1924 permanently set to be apportioned according to each nationality's proportion of the total U.S. population as determined in 1920 census.
1939	Congress defeats refugee bill to rescue 20,000 children from Nazi Germany despite willingness of American families to sponsor them, on the grounds that the children would exceed the German quota.
1942	Bilateral agreements with Mexico, British Honduras, Barbados and Jamaica for entry of temporary foreign laborers to work in the United States—bracero program.
1943	Chinese Exclusion Laws repealed.

1946 Congress passes War Brides Act, facilitating immigration of foreign-born wives, husbands and children of U.S. armed forces personnel.

1948 Congress passes Displaced Persons Act (amended in 1950), enabling 400,000 refugees to enter the United States.

1950 Internal Security Act increases grounds for exclusion and deportation of subversives; aliens required to report their addresses annually.

1952 Immigration and Nationality Act of 1952 (McCarran-Walter Act):

- reaffirms national origins system giving each nation a quota equal to its proportion of the U.S. population in 1920;
- limits immigration from Eastern Hemisphere to about 150,000; immigration from Western Hemisphere remains unrestricted;
- establishes preferences for skilled workers and relatives of U.S. citizens; and
- tightens security and screening standards and procedure.

1953 Refugee Relief Act admits over 200,000 refugees outside existing quotas.

1957 Refugee-Escapee Act defines refugee-escapee as any alien who has fled from any Communist country or from the Middle East because of persecution or the fear of persecution on account of race, religion or political opinion.

1960 Cuban refugee program established.

1964 United States ends bracero program.

1965 Immigration and Nationality Act Amendments of 1965:

- abolish the national origins system;
- establish an annual ceiling of 170,000 for the Eastern Hemisphere with a 20,000 per-country limit; immigrant visas distributed according to a seven-category preference system, favoring close relatives of U.S. citizens and permanent resident aliens, those with needed occupational skills and refugees; and
- establish an annual ceiling of 120,000 for the Western Hemisphere with no preference system or per-country limit.

1975 Indochinese Refugee Resettlement Program begins.

1976 Immigration and Nationality Act amendments of 1976:

- extend the 20,000 per-country limit and the seven-category preference system to the Western Hemisphere.
- maintain the seperate annual ceilings of 170,000 for the Western Hemisphere.

1978 Immigration and Nationality Act Amendments of 1978 combine the ceilings for both hemispheres into a worldwide total of 290,000, with the same seven-category preference system and 20,000 per-country limit uniformly applied.

1978 Congress establishes the Select Commission on Immigration and Refugee Policy.

Congress passes law excluding and deporting Nazi persecutors.

1980 Refugee Act establishes clear criteria and procedures for admission of refugees.

are frequently frustrated either by the restrictive criteria applied or through the interaction of specific provisions with patterns of demand. For instance, while strong emphasis is now placed on family reunification, husbands, wives and children can be separated for years because per-country and/or preference limitations have been reached. The low priority accorded nonfamily immigrants and a cumbersome labor certification process for clearing them for admission has made it difficult for persons without previous family ties in the United States or extensive training and skills to immigrate.

In an effort to learn more about the current immigrant selection system and the effect of immigrants on the United States, the Commission undertook a major review of existing research on immigrants and conducted some research of its own. Together with additional information developed in Commission hearings and consultations, this research has been invaluable to the Commission in evaluating existing policy and in developing a new immigrant admissions system which will, in the Commission's view, serve the national interest now and in the future. Although all existing literature cannot be summarized here, the following highlights what is known about the characteristics and the impact of immigrants on the United States.*

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*Extensive research data and analysis will be submitted to the President and the Congress prior to May 1 as backup to this report.

Numbers of Immigrants

As can be seen from Table 4, immigration in the 1970s rose considerably above levels for the decades which immediately preceded it.* Contributing to this increase were the changes in the 1965 Act which led to an average annual increase of 100,000 immigrants during the ten years after its enactment. Immigrant admissions, as shown in Table 5, have increased even more significantly in the past few years, due largely to the numerically unlimited adjustment of previously paroled Cuban and Indochinese refugees.

Although these increases have coincided with a declining U.S. birth rate, thereby increasing the proportion of population growth due to immigration, that proportion is still far smaller than it was during the decades of high immigration which bracketed the turn of the century, as may be seen on Table 4. In fact, in the decade between 1900 and 1910, immigration accounted for more than 40 percent of U.S. population growth when the population was growing at more than 2 percent. In the 1970s, when the population was growing at less than 1 percent, immigration accounted for less than 25 percent of that growth.

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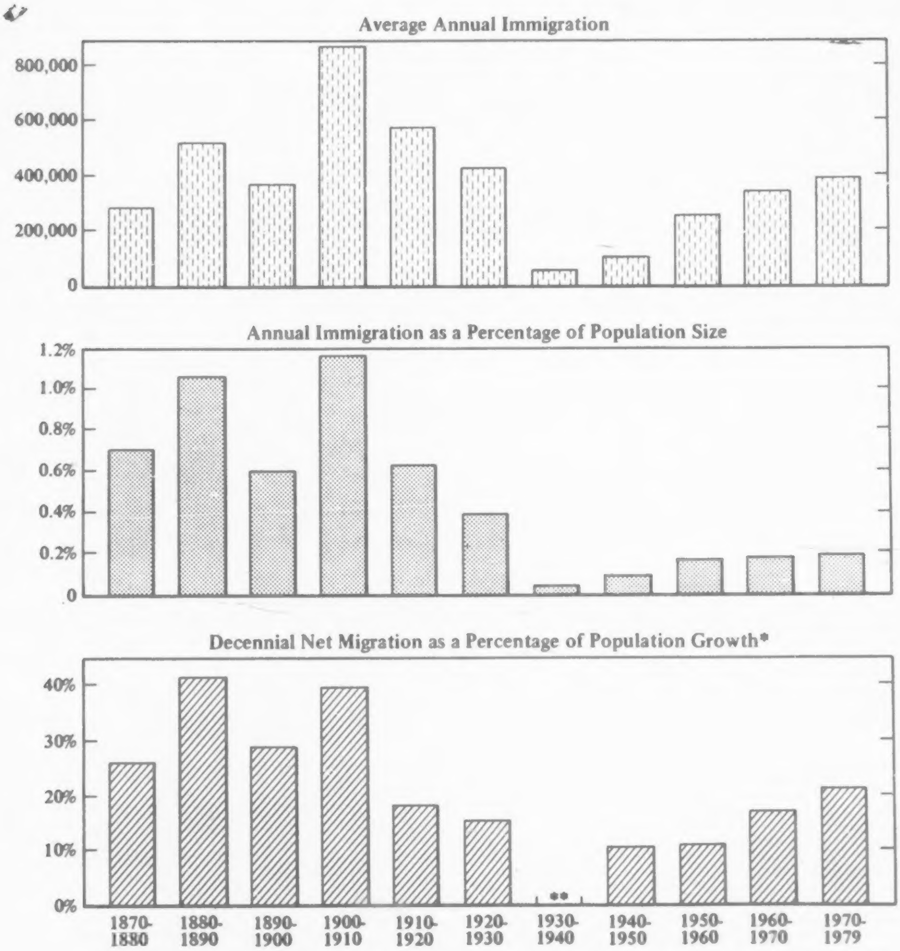
*Although there is no reliable data on the rate of emigration from the United States, many research studies estimate this factor at about 30 percent of overall immigration.

TABLE 4

LEVELS AND RATES OF U.S. IMMIGRATION, 1870-1979



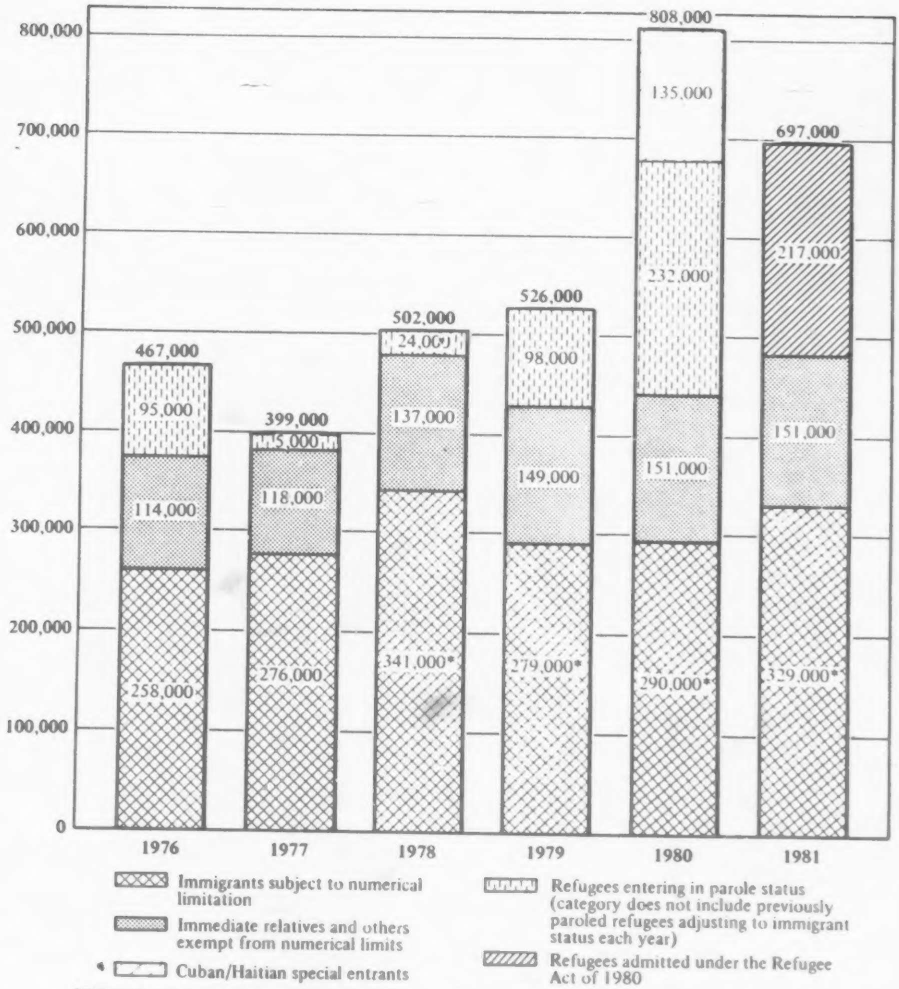
*Decennial net migration as a percentage of population growth equals total decennial population increase minus natural population increase (births and deaths) divided by total population increase.

**Emigration exceeded immigration by 85,000.

SOURCE: "Immigrants: How Many?" Select Commission on Immigration and Refugee Policy, January 1980.

TABLE 5

U.S. GROSS IMMIGRATION, 1976-1981



SOURCES: U.S. Immigration and Naturalization Annual Reports, 1976-78 and unpublished INS data, 1979; INS reports of aliens paroled and special entrants admitted, 1976-80; State Department field visa issuance reports and projections based on previous totals in certain categories for 1980 and 1981.

* Includes part of the 145,000 extra numerically limited visas issued as a result of the Silva v. Levi court decision.

existing immigrant visa backlogs by providing additional visas, 50-100,000 per year, for up to five years. While it may appear that this measure would not totally eliminate the existing backlogs (nominally at about 2 million in January, 1987), it is our experience that the number of registered applicants for immigrant visas is higher than the actual demand when visas do become available. Moreover, it is our experience that many who are counted as current registrants for backlogged immigrant visas have in fact applied for and will receive legalization under the Immigration Reform and Control Act of 1986.

Such a sharp reduction in the backlogs for immigrant visas would provide an appropriate basis for review of the immigrant preference categories in two and five years, when most legalized aliens will have obtained petition rights for their close family members.

ALLOCATION OF VISAS TO SPECIFIC PREFERENCE CATEGORIES

We support the additional immigrant visa numbers allocated to the A-2 (formerly Second) preference for immediate relatives of lawful permanent residents. The backlogs in this category create extreme hardship to the affected lawful permanent resident spouses and parents and are truly heartbreaking. Lawful permanent resident aliens, who are ineligible to obtain citizenship for five years, can be separated from spouse and unmarried sons and daughters for a period that now exceeds a year and four months. The proposed increase of immigrant visa numbers for this category would eliminate this problem.

While we think that an increase in the number of visas available annually to independent immigrants is warranted, we would urge that more visas be apportioned to the independent preference categories based on exceptional ability or offers of employment. It is our recommendation that the number of visas available to the non-preference category be reduced to, say, 10,000 per year, and that the remaining 40,000 visas be made available to the independent immigrant or family reunification categories.

While we encourage further discussion on this subject, our initial thoughts would be to provide 20,000 to 30,000 additional visas for independent immigrants with 10,000 to 20,000 additional visas for family immigrants. And the bill already provides for "cross-over" of unused visas in the following fiscal year.

Regretfully, we must express our grave concern over the provision for review and revision of the numerical limitations by executive branch action and Congressional radification. While we share the desire for more frequent review of the numerical limitations that motivates this proposal and was recommended by the Select Commission, we feel that the mechanism provided is not apppropriate to the benefits at stake.

While we are mindful of the national interest in preserving limitations on the number of annual admissions to the U.S., we strongly oppose those who would use extreme tactics and overblown rhetoric to attempt to impose their agenda of sharply reducing the number or "kind" of immigrants into the United States. We see in the proposed mechanism for review and revision too much opportunity for a small minority to sharply cut back on the number of available immigrant visas. While we cannot say this would never be appropriate, we would urge that this result be possible only after the most full and deliberate discussion and debate in Congress under normal legislative procedures.

Only if limited to increases in one year's annual admissions might the expedited procedure be acceptable.

LABOR CERTIFICATION FOR PERMANENT IMMIGRATION

Section 5 of S. 1611 proposes changes to the immigrant labor certification process that we fear could have a drastic adverse effect on the ability of U.S. businesses to sponsor certain highly skilled personnel necessary to their business.

We support the intent of the law to prevent the mere displacement of U.S. workers by alien workers or adverse impact to U.S. workers' wages and working conditions. We are not completely satisfied with the current system and criteria for making immigrant labor certification determinations. However, we do not believe the subtle changes to Section 212(a)(19) proposed by this bill will make substantial improvements commensurate to the risk of negative effects to U.S. businesses. The proposal makes three essential changes: (1) the scope of the test for availabe U.S. workers would be national in all cases, instead of being tailored to the particular occupation; (2) the Secretary of Labor could use labor market statistics to deny labor certification in an individual case; and (3) the standard of federal court review of determinations by the Secretary of Labor is raised to rule out all but the most extreme cases.

Under the present immigrant labor certification process, the scope of an employer's recruitment is determined by the usual practice in the industry for the specific occupation. In most of the professions, the required scope of recruitment is routinely national. At the other end of the spectrum, the required scope of recruitment for experienced domestic workers, such as housekeepers, is usually regional. The amendment proposed would appear to require national recruitment in all cases for all occupations. In its most negative light, we read this provision to require the denial of labor certification if U.S. workers were available in any part of the country, regardless of their willingness to move to the location of the job. While national recruitment is certainly appropriate in many cases, it should not always be obligatory.

This problem is compounded by the amendment that permits the Secretary of Labor to make determinations based solely on labor market information without reference to the specific job opportunity. While this permissive authority could greatly increase efficiency and economy in determinations regarding occupations well known to be in short supply, we fear that national labor market statistics could be used to deny a U.S. employer the services of a potential alien employee simply because paper statistics indicated that workers were available someplace in the United States. If this provision is retained, we would urge the committee to limit the application of this provision to approvals of immigrant labor certification only. We stand by the principle that an individual U.S. employer should not be denied a needed employee who is an alien without the opportunity to prove that, in fact, no U.S. workers are available.

Finally, we do not understand the proposal to change the standard of judicial review of determinations by the Department of Labor in these cases. As the committee is well aware, only a very small number of cases are appealed to federal court each year. Moreover, we are not aware of any problems that warrant this change in the standard of review.

Overall, we believe it is premature to so drastically change the immigrant labor certification processes until further study has been completed. Under current law, as well as under the proposals contained in S. 1611, less than 30,000 principal aliens immigrate to the United States each year with immigrant labor certification. While this number has no statistically significant impact on the U.S. labor market, each one of these individuals is a needed employee to a U.S. business for which considerable effort and expense has been expended.

Rather than rushing to make changes to immigrant labor certification provisions, we urge this committee to defer until a targeted study of the immigrant labor certification process has been completed in the context of implemented employer sanctions under the Immigration Reform and Control Act of 1986.

CONCLUSION

Although in this testimony we have regretfully tended to give more attention to our critical suggestions for change and improvement, I want to reiterate AILA's support for this effort to reform U.S. legal immigration policies in general and for this bill, S. 1611, in particular.

It has been some time since the final report of the Select Commission was completed and many of these proposals were first made. Since then, we believe that many have come to better understand both the value and impact of immigration to the United States. We believe these positive intentions motivate the proposals contained in this legislative initiative, and we warmly applaud them even as we suggest further improvements.

We look forward to working with the committee on these matters and would be pleased to answer any questions you may have.

Thank you again for providing this opportunity to share our views with you.

Senator KENNEDY. Very good. I recognize Senator Simpson.

Senator SIMPSON. Mr. Chairman, I want to share with you that when I was chairman I was always upwind from that cigar. It's a ghastly thing. Now as ranking member I just have to pick wherever I can get, because of the chairman's proclivities—he can do anything he wants.

Thank you for extinguishing that pile of—well, stop.

Well, Larry Fuchs and Doris Meissner, and I know Warren, and I don't know Mr. Rubin as well, but we've certainly had some interesting times together. And you, Larry, helped certainly to train me up, and were of marvelous assistance to me in learing this issue when you were the executive or former staff director of the Select Commission, and I really have always appreciated that.

And Doris, I say the same to you, as we worked together for so long. And it's good to see you all here again.

Here's just a quick question to, maybe, each one. But a broad one would be this: Everyone—all of us, all of us here in this panel and down in your panel—know that legal immigration has made a proud and positive contribution.

You've written on it, you've lived it, and you say it. In the settlement of America, in the decades of the turn of the century—all agree that it did much for us.

But today the current economic trends indicate a shift from labor intensive industry and suggest a diminished need for immigration. Now, that may or may not be. But each one of you is a friend of legal immigration; I think I see that, and I strongly support it—a generous legal immigration program.

But tell me, how do we tell the American people what is the justification for large-scale immigration today? How do you do that?

Mr. FUCHS. Do you want me to start, Senator?

Senator SIMPSON. Sure.

Mr. FUCHS. You know they call you chairman emeritus now, and I warn you, emeritus is a permanent condition, so be careful before you accept that.

Senator SIMPSON. The chairman hasn't said anything about that title. I haven't heard that.

Mr. FUCHS. Basically, we all run across two fears about immigration and any attempt to increase numbers of immigrants. And they are perennial fears, and they won't go away, and leadership has to deal with them.

The first fear is the job related fear—that the pie is only so big and that somebody will come in and take my piece of the pie. And the leadership on legislation like this, as you do, and Senator Kennedy does, has to make the case—to your colleagues and to others, and it's a very difficult case to make—that the pie is not just so big.

If it was just so big, we would have had more economic growth in the country if we hadn't accepted immigration during the 19th century and 20th century and so on.

It isn't just so big, and in fact, the evidence is overwhelming that immigrants contribute disproportionately to economic growth. Now that may even be more true in recent years, although it's very hard to demonstrate that.

But is may even be more true than it was when my grandparents came over, and some of the others who are sitting in this room whose grandparents and great-grandparents came over, because our immigration system now brings in people who not only are coming into a family infrastructure, but they've been screened so carefully, compared to my grandparents.

They contribute to economic growth, they generate jobs. They fill important places in the economy which are more complementary than supplementary. And you just have to take that case to the American people.

Now the evidence on this is overwhelming. It's not as if that's in dispute in the research community. So that's the first fear.

The second fear that you run across all the time is that these folks are somehow going to change our basic character, as a people, as a nation. And people are understandably afraid about that. They look funny, they talk funny, and that's the kind of feeling that people who are already here always have about the people who are coming in.

Remember that cartoon we used to have at the Select Commission of the Indian watching the Mayflower come in, and he said, "They look funny, they talk funny, we'd better watch out!" But the Indians, they say, has bad immigration laws. Well, they didn't have any laws at all.

So, you've got to take that case, too. And the evidence is overwhelming. It's overwhelming that what holds us together as a nation is not how we look, or how our ancestors talked, or what religions they had, but our dedication to all of the great propositions in the Declaration and in the Constitution, and the living out of those things.

Which the immigrants do. They become partriots. Their children become patriots.

So you have to take that case. Those are real fears. They are understandable, they are human fears. They have to do with the outsider and the insider, and it's a difficult case to make. But you can do it.

Senator Simpson. Well, it seems that we will be better able to move along with legal immigration reform without the terrible controversy and emotion than we did with illegal immigration reform.

I have a good sense that that's true and I think we're going to get something very positive. I really feel that, because the point system is a very interesting thing to me, as are the preferences and our revisitation of those. We're going to be about our business, and it's going to be a pleasure to work for the chairman.

Let me ask Diris Meissner: I known of your interest in providing more recognition of independent immigrants in our legal immigration system. You have also written some interesting things in these last months, and I've looked at those.

But do you believe that we should award visas based solely on the "skills" that the potential immigrant possesses, or should we also award visas to aliens who possess skills which are in demonstrably short supply in the United States?

Ms. Meissner. I favor a point system, and I favor skills as one basis for awarding points. But skills are a whole range of things.

Skills can be babysitting and taking care of homes, and they can be being a nuclear scientist.

So we do need to find some kind of match, and some kind of way to determine where, from the vantage point of economics, in our own labor markets we don't have skills that are required, and match that with a potential immigrant flow.

Senator SIMPSON. Let me ask Mr. Rubin: I note your concern about the issue of family preference. I hear that, and I think our personal view—I think the chairman obviously shares it—is that we should consider the "national interest," the long-term welfare of the majority of the nation's citizens and descendants.

And none of us would dispute the need to reunify the immediate family, because we surely do that, beautifully. For permanent resident aliens, or for U.S. citizens. But the case for other family members is not nearly, perhaps, as compelling.

I guess I would think in some instances an independent immigrant, with significant or needed skills or training, might be more "beneficial"—and I use that in quotation marks—to the country than an adult brother or sister of an adult U.S. citizen, perhaps.

In your mind, how does the immigration of nonimmediate family members—members other than the nuclear family—better serve the national interests than the immigration of someone with the needed skills and training?

Mr. RUBIN. First of all, I don't, in terms of married brothers and sisters, accept the designation "nonimmediate" relatives, and I think that may be the nub of the dispute.

Senator SIMPSON. Yes. The definition.

Mr. RUBIN. Yes. And I would make several points in support of that.

One is that I think that we have to recognize that we're not only dealing with various kinds of immigrants here; we're also dealing with a benefit to American citizens.

It is a valued, important benefit to American citizens that they can bring their brothers and sisters to the United States. Elimination of the married brothers and sisters category would be, among other things, the taking away of a valued benefit to American citizens, and that has to be taken into account when one judges the national interest.

Second, a point that I made when, I think, you weren't in the room, which I think is important in responding to this question.

In terms of an "American" concept of a family, and in terms of defining the national interest, there are cultures in the United States, not in foreign countries, but cultures in the United States which are important in defining what is an American concept of a family and what is the national interest around the family.

After all, Asian Americans, Hispanics, Jews, Italians and others, who very much value adult brothers and sisters, are American citizens, and their view has to be taken into account when we define what's an American citizen.

And finally I would say that, in terms of the national interest, there are two additional points to make. One is that our national interest, to me, is preserving the value of family. And I think that we're trying to do that—reintroduce that into the social welfare laws.

It's very important that family values be expressed in our immigration laws. I wouldn't want to see any backsliding from that, which I think would happen if you cut the fifth preference category.

And finally, as Senator Kennedy mentioned when he asked about our report, all indications are that people who have come in as adult brothers and sisters of citizens have served the national interest well. It's not the reason they came in, but if you add up their economic contributions, as Professor Fuchs said, it's been very positive, and very much within the national interst, no matter how you define it.

Senator SIMPSON. Indeed. And I remember testimony of 2 or 3 years ago, however, which was of very great interest to me, that one U.S. citizen had brought in 64 derivative relatives on one U.S. citizenship, and that needs to be, I think, revisited. That's the purpose of what we're doing.

Mr. RUBIN. But that's not because that one person had 64 brothers and sisters.

Senator SIMPSON. No, he had 64 derivative relatives, eventually.

Mr. RUBIN. Well, what those studies usually do is, they take a brother and a sister, and then a brother and a sister have more relatives, and they are added to the supply.

But don't forget, that brother and sister cannot take in additional relatives until they themselves are American citizens, and they are acting independently in the category of brothers and sisters.

I wouldn't take people that they bring in and attribute it to the brother or sister who brought them in. They're independent citizens, acting within their prerogrative as Americans, and I think they have every right to bring them in.

Senator SIMPSON. I understand.

Let me just ask one then of Mr. Leiden, and then I'll conclude.

I'm aware of the assistance—significant assistance—the immigration bar provides to American businesses which apply for foreign labor, and I think that many of the aliens admitted for business purposes are positive and solid additions to our country.

I would ask, how might our legal immigration system both respond to business needs, and yet insure that those needs are fulfilled by the immigrants we admit? Would your organization object to granting visas on a conditional basis, with the requirement the alien perform a certain amount of work in the industry for which he was admitted?

Mr. LEIDEN. We've actually looked at something like that for the present sixth preference category and have considered discussing it as a proposal, but we haven't worked out all the details. I think the danger of a conditional status, and it's something we're now struggling with under the marriage fraud bill, is that it tends to tie the individual and puts them on an unequal basis to the sponsor, whether it's an employer or whether it's a spouse.

And if there was a way we could get around that inequality, I think we all want to avoid the situation of a person who used their work to qualify for a green card and the minute they get the green card, boom, they're out of that job field and doing something else.

If we're admitting them for certain skills, or to fill a needed place, then it seems that's what they should do. Putting aside, of course, the question of fraud, and we have criminal laws that will prevent that.

But there are some difficulties to overcome so that we don't have an unequal employment relationship, which of course is going to adversely affect other U.S. workers' working conditions and wages.

Senator SIMPSON. Well, these things will be very helpful to us as we attempt to achieve new legislation in this area, and I guess, Larry, just one other thing, and then I'll stop. Mr. Chairman, you're very courteous.

I heard what you said, but are we really seeking a larger population, or what? Why do we want large-scale immigration? The answer to that will assist us in framing the legislation. What are we attempting to achieve, just swiftly.

Mr. FUCHS. You get the following things from substantial immigration. That doesn't mean that you don't have political and social constraints on immigration. But we're talking here about numbers that are politically really acceptable.

What we're seeking, really, is the infusing of the American population regularly, on a sustained basis, with people who have what we used to call "the X-factor." The people who have the drive, the determination, the people who, because they're screened through 33 exclusions, tend to be healthy, tend to be more in the age category where they can contribute, people for whom the investment in their education has already been made—they infuse and build our Social Security base, they help in our own defense posture.

It's marginal, to be sure, but they contribute to our national strength in this way.

We're the only country in the world that really can do it. We're the only country that can handle that, because we've got the political ideology, political structure and the institutions that enable us to facilitate and acculturate people on such a rapid basis.

You may recall the episode, the 6-month refugee, Vietnamese kid who pointed to George Washington's picture on the wall, after the Anglo kid couldn't tell me who he was, and the Vietnamese kid says, "That's the father of our country!"

You know, there is no other country in the world where you can get the kind of appropriation of the country—the getting into its and claiming it.

So they do that on a continuing basis.

Now in terms of the big numbers, and so forth, that's not our problem as a nation. Our problem is that to remain a great nation, and I can refer you to all the books on this—Kenny Organski's book in international relations on what makes a great nation—you have to have strength, determination, that continual infusion, and you have to have a population base.

Our problem, of course, as we all know, is low fertility. I go in and show my grandchildren's pictures in the faculty dining room—I'm embarrassed to do it because it's going to make somebody feel miserable because there are so many guys over 60 who don't have grandchildren.

So we've got a problem here in sustaining that base. Now you remember at the Select Commission we factored it out in a model—if you had a net migration—net, that is, taking away emigration of 500,000 you'd reach zero population growth by the year 2050, anyway. You'd reach it at 274 million, given the assumptions in the model about fertility and death.

Now, 274 million people in the United States—or 280 million, that is not a lot of people, by the year 2050. A population of 270 million or 280 million, and that's what you'd get if you had a net immigration of 500,000 a year.

So I don't think that's our problem. Our problem is national strength. Our problem is sustaining national will. Our problem is keeping an economy that is vibrant and strong.

Immigration can contribute to that marginally. It certainly can't do the whole thing. A lot of other factors are more important. But it doesn't take away; it contributes.

Senator SIMPSON. Thank you, Mr. Chairman.

Senator KENNEDY. Aren't you glad you asked that question, now? [Laughter.]

Senator SIMPSON. Well, I'm not a grandparent yet.

Senator KENNEDY. We want to thank our panel, and if you have other ideas we want to work very closely with you. It's been a very helpful commentary, and we welcome your continued involvement as we shape the legislation.

The committee stands in recess.

[Whereupon, at 1:05 p.m., the subcommittee was adjourned.]

LEGAL IMMIGRATION REFORMS

FRIDAY, DECEMBER 11, 1987

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Edward M. Kennedy (chairman of the subcommittee) presiding.

Also present: Senator Simpson.

Staff present: Jerry Tinker, staff director; Heather Hodges, counsel; Michael Myers, counsel; Melinda Nielson, chief clerk; Richard Day, minority chief counsel and staff director, and Carl Hampe, minority counsel.

Senator KENNEDY. The subcommittee will come to order.

OPENING STATEMENT OF SENATOR KENNEDY

Today's hearing continues the subcommittee's review of legislative proposals to bring some long-needed reforms to our existing system of admitting immigrants to our country.

This is the second half of the immigration reforms proposed in 1981 by the Select Commission on Immigration and Refugee Policy. In the last Congress, we adopted the first half dealing with measures to control illegal migration; now is the time to deal with reform of our legal immigration system.

This issue has been thoroughly studied, from the 16 regional hearings conducted by the Select Commission, to the innumerable expert consultations both with the Select Commission as well as with this subcommittee over the years.

In addition this subcommittee has conducted dozens of hearings on the issue of legal immigration reform during the last 6 years.

So now is the time to act, to see if we can't narrow our differences and move ahead. There is clearly a growing consensus on what needs to be done, and we will look forward to the testimony of today's witnesses, both administration officials as well as immigration experts, on the proposals before us, both the bill I introduced and the draft circulated by my colleague, Sentor Simpson.

The most important issue before us is how we can expand a new independent category of immigration without jeopardizing the opportunities we established in 1965 for family reunification and how we can reopen our doors to the "old seed" sources of immigration without curtailing the new sources of immigration.

It is a question of how we correct an unexpected imbalance stemming from the 1965 act.

Again, we look forward to the expert testimony of our witnesses, who have long and distinguished careers on immigration policy.

At the outset, I want to indicate how helpful we have found these hearings and the comments on the legislation by the recognized experts in the immigration field. Since our hearing on October 23, we have already adjusted several key features of the bill to take into account the constructive suggestions made by the hearing's witnesses. For example, we have adjusted the point system to simplify it, to remove the concerns over the phrase "adversely affected nations" so that there is no hint we are returning to a national origins quota system. We have revised the modified sunset provision to ensure that Congress, not the President, will have the last word in any adjustments after 5 years. We have added some modest numbers to deal with the backlog in the existing preferences.

These are just a few of the modifications we have made, and I am certain we will make some more after we hear from this morning's panel.

Senator KENNEDY. We are delighted to welcome Commissioner Alan Nelson of the Immigration and Naturalization Service. He has appeared before us often, including on this issue. He has just returned from a study visit to Australia, and I know we agree we have a lot to learn from both Australia and our Canadian friends. In drafting my bill, we use some of the experience of the Canadian system, so we look forward to your testimony here this morning.

Jerome Ogden, who is the Deputy Assistant Secretary for Visa Services of the Bureau of Consular Affairs at the Department of State, was here in October testifying on my bill, and now we welcome him back to discuss Senator Simpson's proposal.

Before we hear from the Commissioner, I would like to place in the record the statement of Senator Simon.

[Statement follows:]

STATEMENT OF SENATOR PAUL SIMON

ON S. 1611

December 11, 1987

MR. CHAIRMAN. AS I EXPRESSED AT THE SUBCOMMITTEE'S FIRST HEARING ON THIS LEGISLATION, I AM TROUBLED BY SOME OF THE CHANGES TO OUR LEGAL IMMIGRATION SYSTEM WHICH THIS AND OTHER BILLS PROPOSE. THIS NATION HAS HAD A PROUD HISTORY OF WELCOMING PEOPLE FROM FOREIGN LANDS. OUR CHAIRMAN HAS MADE SOME OF THE MOST IMPORTANT CONTRIBUTIONS TO IMMIGRATION LAW IN OUR HISTORY. SPECIFICALLY, I AM REFERRING TO THE 1965 IMMIGRATION AND NATURALIZATION ACT WHICH ENDED THE DISCRIMINATORY AND ANTIQUATED NATIONAL ORIGIN QUOTAS FROM THE LAST CENTURY. IN ADDITION, OUR RANKING SENATOR SIMPSON WILL GO DOWN IN HISTORY AS MAKING SOME OF THE MOST MAJOR CHANGES TO OUR NATION'S IMMIGRATION POLICY IN THIS CENTURY. TIMES CHANGE BUT THE REFORMS SUGGESTED TODAY MAY LEAD THIS NATION IN AN UNWISE DIRECTION.

I AM CONCERNED THAT S. 1611 SEEKS TO LIMIT THE ELIGIBILITY OF PERSONS SEEKING ENTRY INTO THE UNITED STATES UNDER THE SECOND AND FIFTH PREFERENCE CATEGORIES. UNDER CURRENT LAW ANY UNMARRIED SON OR DAUGHTER OF A PERMANENT RESIDENT IS ELIGIBLE FOR PERMANENT RESIDENCY UNDER THE SECOND PREFERENCE CATEGORY. S. 1611 LIMITS ELIGIBILITY TO ONLY UNMARRIED CHILDREN UNDER THE AGE OF 21. ALSO, SHOULD S. 1611 BE ENACTED, ONLY UNMARRIED BROTHERS AND SISTERS OF UNITED STATES CITIZENS WOULD BE ELIGIBLE FOR ENTRY UNDER THE FIFTH PREFERENCE GUIDELINES. SENATOR SIMPSON'S INITIATIVES IN THIS AREA GO EVEN FURTHER--ALMOST ELIMINATING THE FOURTH AND FIFTH VISA PREFERENCE CATEGORIES IN THEIR ENTIRETY.

I PREFER RETAINING CURRENT ELIGIBILITY REQUIREMENTS FOR SECOND AND FIFTH PREFERENCE. I AGREE WITH THE 1981 SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY RECOMMENDATION THAT WE MAINTAIN THE PRESENT POLICY OF ADMITTING ALL BROTHERS AND SISTERS OF ADULT U.S. CITIZENS WITHIN AGREED UPON NUMERICAL LIMITATIONS. I AM CONCERNED THAT THIS LEGISLATION MOVES FAR AWAY FROM THE COMMISSION'S RECOMMENDATION THAT THE REUNIFICATION OF FAMILIES CONTINUE TO PLAY A MAJOR AND IMPORTANT ROLE IN U.S. IMMIGRATION POLICY. WHILE THERE CAN BE NECESSARY CHANGES TO PRESENT PREFERENCES SUCH AS EXAMINING THEDECADE-LONG WAITING LIST FOR SECOND PREFERENCE VISAS FROM MEXICO, I DO NOT BELIEVE THAT IMPROVEMENTS IN SECOND PREFERENCE SHOULD COME SOLELY AT THE EXPENSE OF RE-UNITING BROTHERS AND SISTERS OF U.S. CITIZENS.

IN ANOTHER AREA, S. 1611 ALTERS PRESENT LAWMAKING RESPONSIBILITIES BETWEEN THE EXECUTIVE BRANCH AND THE CONGRESS. I AM PLEASED, MR. CHAIRMAN, THAT YOU HAVE MADE SOME CHANGES IN THE BILL FROM ITS ORIGINAL DRAFT SO THAT CONGRESS RETAINS ITS FULL LAWMAKING POWERS WHEN THE PRESIDENT RECOMMENDS REVISING THE ALLOCATION OF VISA NUMBERS BY MORE THAN TEN PERCENT.

FINALLY, I SHARE YOUR DESIRE TO INCREASE BY 50,000 THE NON-PREFERENCE VISAS. I AM AWARE THAT YOUR BILL IN THIS REGARD IS A BEACON OF HOPE TO IRISH- AND OTHER AMERICANS. I AM CONFIDENT THAT WE CAN ADDRESS THE COMPELLING NEEDS OF THAT COMMUNITY IN A BALANCED AND FAIR MANNER. IT IS MY HOPE, HOWEVER, THAT THESE VISAS WILL NOT BE RESTRICTED TO PROSPECTIVE IMMIGRANTS FROM ANY PARTICULAR COUNTRIES.

MR. CHAIRMAN, YOU HAVE PROVIDED CONTINUED LEADERSHIP TO THIS BODY ON IMMIGRATION ISSUES AND IN MAINTAINING THE INTEGRITY OF THE FAMILY. I LOOK FORWARD TO WORKING WITH YOU TO IMPROVE THIS BILL AND TO RE-AFFIRM THOSE GOALS THAT WE BOTH SHARE.

Senator **Kennedy**. Glad to have you here.

STATEMENT OF A PANEL INCUDING: ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE; AND JEROME C. OGDEN, DEPUTY ASSISTANT SECRETARY FOR VISA SERVICES, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Commissioner **Nelson**. Thank you, Mr. Chairman. It is a pleasure to be back with you again. I again appreciate working with you and the committee on this important issue as well as the many other immigration issues. We did testify—my deputy, in my absence—on your bill in October, and I am pleased to testify today on Senator Simpson's bill.

I would like to submit our full testimony for the record, if I might.

Senator **Kennedy**. It will be printed in its entirety as if read.

Commissioner **Nelson**. Thank you.

I will just summarize a couple of the key points and then some of the suggestions we have regarding the process.

Clearly, as you stated, Mr. Chairman, in your opening statement, having dealt with illegal immigration through passage of the immigration bill last year, now is the time to begin in earnest the process of studying and moving to some resolution of our legal immigration system. And your bill and Senator Simpson's proposal are both important steps in this process.

I think I will make a number of points. One is clearly, we do need to look at, as we plan ahead in legal immigration, the impact of IRCA, particularly the legalization and special agricultural worker provisions, as well as sanctions and how these might impact numbers. That is one thing we need to keep in mind.

I think we also always need to keep in mind that we are a nation of immigrants—we are proud of that, we want to continue that—of legal immigration. And just again to reiterate, we have a solid foundation that we want to build on, and we ought to be avoiding some of the allegations some make about cutting back on our legal system. We want to continue to expand and by cutting back on illegal immigration, we can do that.

Just for the record, from fiscal year 1982 through 1986, 2.87 million persons were granted immigrant status. This is an average of 574,000 a year. We do have a backlog problem. People are waiting. Mr. Ogden will no doubt speak more on that. In 1981, when the Select Commission made its report, only 1.1 million persons were registered for immigrant visas. Now it is over 2 million. And interesting—two-thirds of those are in the fifth preference. So that is one area we need to definitely address.

We ought to consider the current situation for fifth preference. Persons applying now cannot reasonably expect to be issued immigrant visas until well into the next century.

Senator Simpson's package proposes some fairly substantial changes in the current system, and I think the key thrust, Mr. Chairman, for your bill and his is that we continue the discussion, the hearings. The administration, I would expect, will soon be developing some suggestions on our own, building on yours. We need further review and collaboration. We all have the same aim in mind; we need to continue the discussion and the debate in this area and now try to work toward resolution.

Let me make some preliminary comments regarding some of the basic provisions of Senator Simpson's bill.

We do support in principle the creation of the two separate categories, one for family and one for independent immigrants. The legislation, we note, does not address the reduction or clearance of the backlog of existing immigrant visa registrants through special means, and that is an issue that need further addressing.

Senator Simpson's proposal would cap annual admissions of family connection preference immigrants at 465,000 minus certain factors. Again, that is a debatable issue. We know there are some pros and cons on the cap. That again needs to be looked at, and we need some more discussion on that. I think some limitations, obviously, need to be considered, but we need to look further into that.

The mechanism for regular review of limits, where there would be annual reports, and then every 3 years, the President would transmit the recommendations on numbers—again, this is one where we must be careful. Where we do agree with a system of flexibility—I think that is inherent in this—we must have a balance between a reasonable regular review and the continual debate and uncertainty and possible politization.

As we know, and we will no doubt hear today, the experts are not in agreement on levels or types of immigration. So the theme is good, but again, we need some more work.

Another aspect of the Simpson proposal is the reduction in categories of family-connected immigrants which would qualify under the preference system. We basically concur with that approach. We do not advocate a preference which confers a potential benefit on parents of minor U.S. citizens. That had been eliminated before, and we don't think that loophole should be reopened.

We generally agree with granting no prospective status for married sons and daughters of U.S. citizens and for brothers and sisters of adult U.S. citizens. We note the Simpson proposal grandfathers in current fourth and fifth preference visa applicants, but we must address the concern of the waiting factor in there.

Another aspect of the Simpson proposal is the independent category. We concur with the general approach there. We concur that an investor category is a desirable addition.

Another aspect, the selected immigrants chosen through a point system, also deserves further clarification and consideration. As you noted, I was recently in Australia, and I think you are right; the Australian and Canadian systems have some merit, and we can draw from them. I think again we have to be sure as we might consider that, not to move into creating a too-complicated system, and that again is an issue of balancing.

Further review is needed with respect to including the independent category within the per-country limits, since we would not want to deny access merely because large numbers of family members born in the same country were also immigrating—another thing I think can be adjusted, but we need to deal with it.

The elimination of the individual labor market test and basing certifications on general job market information is generally a good provision.

So in conclusion, the administration strongly agrees with the need which you have led, Mr. Chairman, in opening the debate, discussing the options, and moving toward conclusion of effectively reforming our legal immigrant admission system. This is an essential supplement now to the Immigration Reform and Control Act, which we do believe is working effectively after one year in operation.

So we do look forward to working with you and the Committee in refining recommendations.

Mr. Chairman, in addition, if I could take a moment—this is not in my testimony, but I think it is appropriate to say, and I say it in all candor, and I hope you take it in the manner in which it is intended.

Right now, the Senate and House are dealing with the continuing resolution and the budget issues. We are faced with a panoply of immigration amendments that frankly, in most cases, have not gone through your committee, have not had the ability to be debated and analyzed. It is a serious situation. And when we consider the discussions we are having here and the need to go through the process as we did with the immigration reform bill, as we are now doing here, to allow things such as the Lautenberg amendment, relating to Cuba—we have now reinstated the agreement; it is not necessary, but it would take away our options in dealing with potential future situations—Mikulski, which deals with Poles—it is great to add people, but it is special-interest legislation; the Moakley-DeConcini bill which is frankly political demagoguery, adding special approaches where you have got asylum and refugee provisions and immigration provisions. The reason I mention that is I think we are trying to be deliberate in developing an effective legal immigration system. We did the same with the illegal system under IRCA. To allow these last-minute, ill-conceived kinds of things to go through might well hurt the ability of Congress to effectively deal in this area. I think that needs to be noted, and I would like the record to reflect it.

Thank you, Mr. Chairman.

Senator KENNEDY. Thank you.

[Prepared statement, along with questions and answers, follow:]

OPENING STATEMENT OF
ALAN C. NELSON, COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE
BEFORE THE SENATE SUBCOMMITTEE ON
IMMIGRATION AND REFUGEE AFFAIRS
CONCERNING SENATOR SIMPSON'S
PROPOSAL TO REVISE THE LEGAL IMMIGRANT ADMISSIONS SYSTEM

Chairman Kennedy and members of the Subcommittee:

Thank you for the opportunity to appear before you today to comment on Senator Simpson's proposal which would revise the provisions through which immigrant visas are allocated under the Immigration and Nationality Act.

We agree that, having dealt with illegal immigration through passage of the Immigration Reform and Control Act of 1986, now is the time to begin the process of studying reform of our legal immigration system. Senator Simpson's proposal is an important step in this process.

The framework for legislative reform of our system of legal immigration must first address the current system and its backlogs of prospective immigrants and how well it is--or is not--working. We must also determine the direction in which we wish to take our immigration policy in the future. Certainly both the work of the Select Commission on Immigration and Refugee Policy and the President's Task Force, which reported in 1981, are important points of reference. Finally, we need to take into account the impact of programs established under the recent Reform Act--legalization, special agricultural workers and employer sanctions--on future legal immigration as we seek to reform that system. It would be unwise to make changes in our legal immigration system without considering the new environment created by IRCA. As we fine tune our legal immigration system, we may wish to review any continued levels of illegal immigration to determine whether these flows should be considered in setting levels of legal immigration.

The current system through which numerically limited immigrant visas are allocated to immigrants was set in place by the 1965 Amendments to the Immigration and Nationality Act with minor amendments made in 1976, 1978, and 1980. These amendments abolished the old national origins quota system and established in their place a more equitable standard now applied on a worldwide basis to prospective immigrants to the United States.

Currently 270,000 visas worldwide may be issued annually to persons qualifying under our system of six preferences, four of which are set aside for the reunification of families and two for the admission of persons whose job skills are needed in this country. Overall, 80 percent of the 270,000 visas are allocated to the relative preferences, with the remaining 20 percent available to needed workers and their immediate families. Certain immediate relatives of U.S. citizens, refugees, and a few additional numerically small groups of immigrants are admitted outside this limit.

Immigration patterns have changed somewhat over our 20-year experience with this system in terms of who is admitted and from which countries. Admissions over the last five years, however, are indicative of our current experience. Overall, from fiscal year 1982 through 1986, 2,870,000 persons were granted immigrant status, an average of 574,000 a year. These figures include immediate relatives of U.S. citizens, averaging 191,000 per year; adjustments of refugees admitted in earlier years, averaging 110,000 per year; other numerically exempt groups, averaging 8,000 per year; as well as those entering under the 270,000 annual numerical limitation.

During the 1982-1986 period, an average of 264,000 immigrants, 98 percent of the limit, were admitted annually under the numerical limitations. Of these, an average of 3 percent (8,000) were first preference unmarried adult sons and daughters of U.S. citizens; 43 percent (114,000) were spouses and unmarried sons and daughters of permanent resident aliens; 7 percent (19,000) were married sons and daughters of U.S. citizens; and 27 percent (71,000) were brothers and sisters of adult U.S. citizens. The two occupational preferences each accounted for 10 percent (26,000 each) of the total.

The annual admission of approximately 270,000 legal permanent residents to the United States falls far below the worldwide demand. Each year tens of thousands of prospective immigrants beyond the numerical limits are petitioned for by relatives in the United States or U.S. employers in need of their skills. There are currently some 2,053,000 prospective immigrants registered at U.S. consular offices abroad who are "in line" to get immigrant visas. This list is rapidly growing. In 1981 when the Select Commission issued its report, only 1.1 million persons were registered for immigrant visas. Of the current 2 million persons waiting, almost two thirds (64 percent) are in the fifth preference as siblings of adult U.S.

citizens, their spouses and minor children. Another 18 percent are second preference spouses and unmarried sons and daughters of permanent resident aliens already living in the United States.

The size of the backlog is similarly disproportionate for persons from certain countries. Twelve countries account for over three-quarters of the registrants, with Mexico and the Philippines each accounting for about 19 percent of the total.

This means that while many people have to wait to immigrate to the United States, the wait is much longer for applicants in some preferences and from certain high-demand countries. For most countries in the world--those with low to modest demand to immigrate--first and fourth preference visas (single and married adult sons and daughters of U.S.citizens, respectively) are available without delay.

Visas are currently being issued to spouses and single sons and daughters of permanent resident aliens who petitioned for them about 16 months ago and to siblings of U.S. citizens who petitioned 5-1/2 years ago. U.S. employers are now actually able to hire professionals under the third preference which they requested 7 months ago and other (sixth preference) workers they requested visas for more than 2 years ago.

The wait is far longer for those registrants from high-demand countries such as Mexico, the Philippines, India, Korea, the Peoples Republic of China, the Dominican Republic, and Hong Kong. While U.S. citizens can generally bring adult unmarried sons and daughters almost immediately, visas are being issued to first preference Filipinos who were petitioned for 5-1/2 years ago. Spouses and unmarried sons and daughters from Mexico who have priority dates in November 1977 are only now being issued visas to immigrate. This long delay has been a magnet for illegal immigration. Similarly, third preference professionals from the Philippines with priority dates in January 1971 are only now immigrating to fill jobs in the United States.

These waits represent only the current visa issuance situation. Because the immigrant visa demand in some preferences and for some countries has grown so rapidly in recent years--and is continuing to do so--waits are getting longer for persons petitioned for today. Consider the current situation for the fifth preference. In 5 years, the worldwide cut-off date for visa issuance has advanced only 1-2/3 years. In January 1982, visas were being issued to persons with February 1980 priority dates. In January 1987, visas were being issued to persons with October 1981 priority dates. During this time persons registered for fifth-preference visas almost doubled from 689,000 to over 1,305,000. Persons applying now cannot reasonably expect to be issued immigrant visas until well into the next century. In the future, as the impacts of legalization and employer sanctions are more fully realized, waits for visa numbers are likely to become longer.

As I mentioned earlier, the Select Commission on Immigration and Refugee Policy addressed these same issues in its 1981 report and recommended some relatively modest but far-reaching changes in our immigrant admissions system. Senator Kennedy earlier this year introduced a bill to amend the system under which the United States admits immigrants to the United States.

As it is now 6 1/2 years since the Select Commission issued its report, we concur that further study is necessary to address subsequent events during this interim period. Additional factors now need to be considered in reforming our legal immigration system. Chief among these factors is the ultimate impact of the major provisions of the 1986 Reform Act on our legal system. Considerable new demand for family reunification will be created through the legalization of perhaps some 2 million aliens. We will know more about the probable derivative impacts on the legal immigrant admissions system after the close of the legalization program in early May 1988.

The earliest demand relating to legalized aliens is likely to be in the current second preference beginning in FY 1989 as temporary residents become permanent resident aliens and petition for their spouses, sons and daughters. Since the second preference is already oversubscribed worldwide, without a change in the law, the wait for visas in this preference will generally become longer for Mexico which is the country of origin of the majority of legalized aliens. Currently, second preference visas are being issued to Mexicans who have priority dates 10 years old. For persons petitioning now, the wait to bring a spouse legally from Mexico is likely to run well into the next century. We must carefully study trends likely in the future or risk the problem of longer waits and potential new illegal flows.

In the mid-1990's, as legalized aliens begin to naturalize and subsequently to petition for immediate relatives outside the numerical limits and, within the preference system, for married children and siblings, demand and backlogs are likely to increase worldwide in these categories also.

Similarly, demand to bring legal immigrant workers in the occupational preferences in certain labor sectors may result from implementation of the employer sanctions provisions of the Reform Act, creating further demand and backlogs as we begin to operate within a totally "legal" immigration system. Further, although the Reform Act provides for both replacement agricultural workers and the H-2A agricultural program, we must be prepared to have the flexibility to address potential labor shortages in the future.

Senator Simpson's package proposes some fairly substantial changes from the current system and is significantly different from other proposals which have been part of the growing debate on restructuring the system through which legal immigrants are admitted to this country. The bill grapples with many of the concerns facing U.S. immigration policy today, including huge demand for a fairly expansive group of relative preferences which cannot be handled within a reasonable time period and existing numerical limits, rapid growth in the numerically exempt categories, and potential new demand flowing from the current legalization program.

We believe the Simpson approach furthers the options for discussion. There are major issues in the debate which deserve further Congressional/Administration review and collaboration. One of the biggest public complaints about current and prospective migration levels in recent debates reflected large-scale illegal immigration rather than legal immigration channels. It was generally argued that if illegal immigration was largely stemmed, that legal flows could be maintained and possibly increased. We believe that the Immigration Reform and Control Act of 1986, passed just one year ago and still being implemented, appears to be working. Further discussion is now required on reforming our legal immigration system.

Against this backdrop, we offer the following preliminary comments regarding Senator Simpson's proposal:

. We support in principle the creation of two separate categories--one for family and one for independent immigrants.

. We note that the proposed legislation does not address the reduction or clearance of the backlog of existing immigrant visa registrants through special means as was proposed by the Select Commission at a rate of 100,000 additional visas annually for 5 years. We believe that this is an issue worth addressing as a matter of fairness to persons who have waited, often for many years, to come legally.

. The proposal would cap annual admissions of "family connection" preference immigrants at 465,000, minus the number of immediate relatives and nonemergency refugee admissions in the previous fiscal year. We must be careful that any reduction in preference numbers which could result from increased refugee admissions does not create new pressures for illegal migration which we have worked so hard to eliminate through the passage of the Immigration Reform and Control Act of 1986.

. The Simpson package establishes a mechanism for regular review of limits. It proposes that the Attorney General, with the Secretaries of Labor, State, and Health and Human Services submit to Congress an annual report discussing the need to revise the family and independent numerical limitations considering:

- requirements of U.S. citizens and legal permanent residents to bring their immediate families;
- the impact of immigrants on labor needs, employment, and other economic and domestic considerations in the United States;
- the impact of immigration on demographic and fertility rates and resources and environmental factors; and

- the foreign policy and national security interests of the United States.

Every three years the President would transmit to Congress a certification on what the numerical limitation should be following solicitation of views of appropriate members of Congress.

While we advocate a system which has some flexibility based on the needs of various policy sectors in the United States, we believe further Congressional/Administration discussions on this approach are merited. We must achieve a balance between a reasonable regular review and continual debate and politization. As you may remember from the Select Commission and subsequent testimony on the impacts of immigration, experts are not in agreement on the impacts of immigration or on which options are preferable.

. The Simpson proposal reduces the categories of family-connected immigrants which would qualify under the preference system. The current second preference, which includes only the spouses and children of permanent resident aliens, would receive highest priority for family reunification within the preferences, and would receive 60% of available visas. We concur with this approach. The high priority given this preference and the greater numbers would help address current and future flows due to legalization. The proposal, however, would grandfather in only spouses and children currently waiting for visas.

- The Simpson package places parents of U.S. citizens into a new second preference category which also includes never married adult sons and daughters of U.S. citizens and allocates up to 30% of the available visas to this group. Parents of adult U.S. citizens have been included as numerically-exempt immediate relatives for the past 22 years; preference for parents of minor U.S. citizens, which previously existed only in the Western Hemisphere, ended 11 years ago. We do not advocate a preference which confers a potential benefit on parents of minor U.S. citizens. Interestingly, when the 1976 legislation ended this benefit for the Western Hemisphere, births to nonresidents of the United States dropped dramatically in the border states, especially Texas. We do not advocate reopening this loophole in immigration policy, even within numerically limited immigration because it serves as a magnet for illegal entry.

- The Simpson proposal confers no prospective status for married sons and daughters of U.S. citizens and for brothers and sisters of adult U.S. citizens, but it grandfathers in current fourth and fifth preference visa registrants. Ten percent of available numbers would be allocated to this group. Currently, two-thirds of the "backlog" of visa registrants are in these two preferences, primarily in the fifth preference. While we concur with the desirability of limiting the immigration of siblings, we must address the concern that persons now on the list for these visas may face even longer waits than they do now--possibly as long as half a century or more.

- Within the new independent category, which would receive a "guaranteed" 100,000 visas annually unless there was insufficient qualified demand at this level, we concur with the general approach taken by Senator Simpson. We have no objection to placing "special immigrants" under the numerical limit because, as now defined, it has historically been a numerically small group. Similarly, the tightening up on professionals is appropriate since possession of a baccalaureate degree alone is no longer a sufficient standard. We further concur that an investor category is a desirable addition to the independent category.

- We believe that the concept of "selected immigrants" who would be chosen through a point system deserves further consideration. We continue to be concerned, however, about the scoring of the potentially large volume of requests for this category, especially since the applications would be valid for only two years. Further, the proposal does not specify the method by which visa recipients would be chosen from the pool of aliens who receive the qualifying minimum of 40 out of 65 possible points. More consultation is needed to develop a workable approach.

- As proposed, per-country ceilings for high-demand countries would apply across the two categories, family-connection and independent, with a two to one ratio. Further review is needed with respect to including the independent category within the per-country limits since we would not want to deny access of a professional whose skills were needed, an investor ready to invest substantial capital here, or even a "new seed" immigrant just because large numbers of family members born in the same country were also immigrating.

- The proposal would reduce the per-country limit for high-demand countries by the number of immediate relatives of U.S. citizens exceeding the higher of either 20,000 or their level of immediate relative admissions at the time the legislation passed, to a maximum reduction of 10,000. While this further spreads immigration opportunities, this provision would affect several countries such as China, India, Korea, the Philippines, the Dominican Republic, and Mexico.

- Finally, the package would eliminate the indivdual labor market test and would allow the Secretary of Labor to base certifications on general job market information. We have no problem with this approach.

Conclusion

The Administration strongly agrees with the need for opening debate and discussing options for reforming our legal immigrant admissions system. A viable legal system is essential to supplement the provisions of the Immigration Reform and Control Act of 1986. The groups included in the preferences and the numbers of visas available must be credible to help maintain and improve a pattern of legal immigration to this country.

We look forward to working with you and the Committee on these important issues as we move toward refining our own recommendations on the legal immigrant admissions system. Important, of course, will be inclusion of the additional information we obtain from the implementation of the Reform Act, especially that provided by the legalization program which closes May 4, 1988.

We believe that Senator Simpson's proposal continues the process of reforming what we believe is already a good system but one that can be made better as a result of our collective efforts.

RESPONSE TO SENATOR SIMON'S QUESTIONS

1. **In your written testimony submitted to the Subcommittee, you stated that "[i]t would be unwise to make changes in our legal immigration system without considering the new environment created by IRCA." I share that concern of yours and am interested to know when would be a propitious time to move on legal immigration reform. Does the Service have adequate information at this early date to determine what impact IRCA will have on the numbers of individuals who will apply for second and other preference immigration in the next ten years?**

We believe that any changes to the legal immigration system must consider the impacts of the Immigration Reform and Control Act of 1986 (IRCA) on the U.S. economy, labor market, and society, as well as the demand for immigration which can be expected to result from the implementation of IRCA. Under the existing legal immigration system, actual entries of relatives deriving benefits from legalized aliens would not occur for many years, but demand to immigrate and backlogs--which are already intolerably long for some countries and preferences--would increase even more dramatically. As noted in our testimony, second preference beneficiaries from Mexico must already wait into the next century to immigrate legally. With a strong majority of legalization applicants coming from Mexico and second preference as the only legal means for permanent residents to bring relatives, second preference backlogs would become even larger. This long-term separation of immediate family members can be expected to serve as a magnet for further illegal entry. Further, as unauthorized workers are removed from the US work force through employer sanctions implementation, new demand for legal immigrant workers--some of whom may not be available in the United States--may develop. New immigration policy also needs to be mindful of these potential demands resulting from the implementation of IRCA.

Clearly, the impacts of these IRCA-related policies will be unfolding over the next several years. We do believe that, as we begin the process of reviewing our current legal immigration policy, we must take these possible impacts into account. At this time INS does not have adequate information to determine the number of preference petitions likely over the next decade. Information which can be used to project the likely derivative flow from legalized aliens is being collected on the legalization application form and through the National Legalization Survey to be conducted under contract by INS. Data from these sources will become available after the close of the processing of legalization applicants for temporary residence.

2. **What improvements, if any, would the Service recommend in the proposal for investor immigration numbers contained in the Simpson draft bill?**

   The Service recommends that the dollar figure for investment be lower than the $2 million suggested in the proposal, perhaps to $500,000 of the alien's own funds. Rather than a deportation charge for failure to complete the investment, the Service recommends granting conditional residence status for three years.

3. **What percentage of current applicants for second preference are adult sons and daughters? What percentage of visa holders approved in Fiscal Year 1987 or the last year for which data are available are adult sons and daughters?**

   INS does not have information on current applicants for second preference. The Department of State maintains these records in its overseas consular posts. In FY 1986, the last year for which immigration statistics are available, approximately 40% of the 110,926 second preference immigrants were the adult sons and daughters of permanent resident aliens or the children of these persons. We assume that this percentage would probably also be typical of the total number of applicants registered overseas for second preference visas.

4. **Please provide the same information as requested in question 3 for married brothers and sisters applying for fifth preference.**

   Of the 70,401 fifth preference immigrants admitted during FY 1986, 25% were married siblings. Another 65% of the total were spouses and children of these siblings who would not qualify for fifth preference status if that group was limited to single siblings of adult U.S. citizens. Of the total, only 6,957 or 10% were unmarried brothers and sisters of adult U.S. citizens.

5. **You testified that the wait for a fifth preference visa for some individuals would be lengthened to half a century under the Simpson draft bill. Wouldn't this and other aspects of the bills under consideration discourage immigrants from following the legal path to the United States and once again introduce pressures to immigrate to the United States illegally?**

We believe that waits of half a century--or even a decade--serve as a further draw for illegal entry. We also recognize, however, that it is difficult to tailor an immigration policy that will meet U.S. needs while not creating unrealistic demand. Certainly reducing the scope of the second preference to include only the closest relatives and eliminating fifth preference altogether--or as an alternative, reducing its coverage--help in this regard.

6. **How many immigrants have legally entered the United States from Asian and Latin American countries in each of the last seven fiscal years?**

The attached table from the 1986 INS Statistical Yearbook shows immigration by continent and country of birth for the past ten fiscal years.

TABLE 3. IMMIGRANTS ADMITTED BY REGION AND SELECTED COUNTRY OF BIRTH
FISCAL YEARS 1976-86

Region and country of birth	1976 and TQ	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
All countries	**502,289**	**462,315**	**601,442**	**460,348**	**530,639**	**596,600**	**594,131**	**559,763**	**543,903**	**570,009**	**601,708**
Europe	**90,577**	**70,010**	**73,198**	**60,845**	**72,121**	**66,695**	**69,174**	**58,867**	**64,076**	**63,043**	**62,512**
Austria	452	400	467	369	401	367	339	433	442	419	463
Belgium	487	377	439	395	426	467	559	538	537	538	620
Czechoslovakia	679	575	744	763	1,051	793	960	946	1,218	1,222	1,118
Denmark	528	433	409	414	504	506	463	513	512	478	554
Finland	356	277	358	327	356	317	346	311	264	290	322
France	1,875	1,618	1,844	1,705	1,905	1,745	1,994	2,061	2,135	2,187	2,518
Germany	7,531	6,372	6,739	6,314	6,595	6,552	(1)	(1)	(1)	(1)	(1)
Germany, Fed. Rep.	(1)	(1)	(1)	(1)	(1)	(1)	6,467	6,725	6,747	7,109	6,991
Greece	10,561	7,838	7,035	5,090	4,699	4,361	3,472	2,997	2,865	2,579	2,512
Hungary	1,066	853	941	881	819	581	642	632	825	1,009	1,006
Ireland	1,473	1,238	1,180	982	1,006	902	949	1,101	1,223	1,397	1,839
Italy	10,415	7,510	7,415	6,174	5,467	4,662	3,644	3,225	3,130	3,214	3,089
Netherlands	1,229	1,014	1,153	1,145	1,169	999	1,053	1,152	1,242	1,217	1,261
Norway	365	334	423	431	403	331	342	409	375	361	354
Poland	[2] 4,769	[2] 4,010	[2] 5,050	[2] 4,418	4,725	5,014	5,874	6,427	9,466	9,464	8,481
Portugal	12,966	9,657	10,445	7,085	8,408	7,049	3,510	3,231	3,779	3,781	3,766
Romania	2,653	2,015	2,037	1,554	1,913	1,974	3,124	2,543	4,004	5,188	5,198
Spain	2,786	2,487	2,297	1,933	1,879	1,711	1,586	1,507	1,393	1,413	1,591
Sweden	710	571	638	750	768	832	874	870	974	1,076	1,098
Switzerland	741	610	706	665	713	601	626	680	620	729	677
U.S.S.R.	10,076	5,742	5,161	2,543	10,543	9,223	15,462	5,214	6,088	3,521	2,588
United Kingdom	14,412	12,477	14,245	13,907	15,485	14,997	14,539	14,830	13,949	13,408	13,657
Yugoslavia	3,524	2,791	2,621	2,171	2,099	2,048	1,418	1,382	1,569	1,662	2,011
Other Europe	923	811	851	849	787	663	931	1,140	719	781	798
Asia	**189,065**	**157,759**	**249,776**	**189,293**	**236,097**	**264,343**	**313,291**	**277,701**	**256,273**	**264,691**	**268,248**
Afghanistan	142	138	180	353	722	1,881	1,569	2,566	3,222	2,794	2,831
Bangladesh	762	590	716	549	532	756	639	787	823	1,146	1,634
Burma	1,001	1,101	1,188	1,534	1,211	1,083	820	723	719	990	863
Cambodia	126	126	3,677	1,432	2,801	12,749	13,438	18,120	11,856	13,563	13,501
China	23,858	19,765	21,331	24,272	27,651	25,803	(3)	(3)	(3)	(3)	(3)
China, Mainland	(3)	(3)	(3)	(3)	(3)	(3)	27,100	25,777	23,363	24,787	25,106
Cyprus	971	478	408	323	279	326	276	265	291	294	307
Hong Kong	7,259	5,632	5,158	4,119	3,860	4,055	4,971	5,948	5,465	5,171	5,021
India	22,072	18,636	20,772	19,717	22,607	21,522	21,738	25,451	24,964	26,026	26,227
Indonesia	676	778	694	820	977	1,006	1,194	952	1,113	1,269	1,183
Iran	3,731	4,261	5,861	8,476	10,410	11,105	10,314	11,163	13,807	16,071	16,505
Iraq	4,038	2,811	2,188	2,871	2,658	2,535	3,105	2,343	2,930	1,951	1,323
Israel	3,827	3,008	3,276	3,093	3,517	3,542	3,356	3,239	3,066	3,113	3,790
Japan	5,417	4,192	4,028	4,063	4,225	3,896	3,903	4,092	4,043	4,086	3,959
Jordan	3,328	2,875	3,483	3,360	3,322	3,825	2,923	2,718	2,438	2,998	3,081
Korea	37,690	30,917	29,288	29,248	32,320	32,663	31,724	33,339	33,042	35,253	35,776
Kuwait	133	160	168	303	257	317	286	344	437	503	496
Laos	163	237	4,369	3,565	13,970	15,805	36,528	23,662	12,279	9,133	7,842
Lebanon	4,532	5,685	4,556	4,634	4,136	3,955	3,529	2,941	3,203	3,385	3,994
Malaysia	484	455	577	623	795	1,033	1,046	852	879	939	886
Pakistan	3,636	3,183	3,876	3,967	4,265	5,288	4,536	4,807	5,509	5,744	5,994
Philippines	47,019	39,111	37,216	41,300	42,316	43,772	45,102	41,546	42,768	47,978	52,558
Singapore	307	308	320	321	322	408	390	362	377	460	480
Sri Lanka	510	376	375	397	397	448	505	472	554	553	596
Syria	1,666	1,676	1,416	1,528	1,658	2,127	2,354	1,683	1,724	1,581	1,604
Taiwan	(3)	(3)	(3)	(3)	(3)	(3)	9,884	16,698	12,478	14,895	13,424
Thailand	8,096	3,945	3,574	3,194	4,115	4,799	5,568	5,875	4,885	5,239	6,204
Turkey	2,155	1,758	1,578	1,764	2,233	2,766	2,864	2,263	1,793	1,691	1,753
Vietnam	4,230	4,629	88,543	22,546	43,483	55,631	72,553	37,560	37,236	31,895	29,993
Yemen (Sanaa)	682	376	258	203	160	230	305	268	324	432	420
Other Asia	554	552	702	718	898	1,017	771	885	685	751	897
Africa	**10,045**	**10,155**	**11,524**	**12,838**	**13,981**	**15,029**	**14,314**	**15,084**	**15,540**	**17,117**	**17,463**
Cape Verde	1,110	964	941	765	788	849	852	594	591	627	760
Egypt	2,290	2,328	2,836	3,241	2,833	3,366	2,800	2,600	2,642	2,802	2,989
Ethiopia	332	354	539	726	977	1,749	1,810	2,643	2,461	3,362	2,737
Ghana	404	454	711	828	1,159	951	824	976	1,050	1,041	1,164
Kenya	528	493	516	618	592	657	601	710	753	735	719
Liberia	300	215	333	327	426	556	593	518	585	618	618
Morocco	516	401	461	486	465	512	445	479	506	570	646

See footnotes at end of table.

TABLE 3. IMMIGRANTS ADMITTED BY REGION AND SELECTED COUNTRY OF BIRTH FISCAL YEARS 1976-86—Continued

Region and country of birth	1976 and TQ	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
Nigeria	907	653	1,007	1,054	1,896	1,918	2,257	2,354	2,337	2,846	2,976
Sierra Leone	137	157	212	217	267	277	283	319	358	371	323
South Africa	1,098	1,988	1,689	2,214	1,960	1,559	1,434	1,261	1,246	1,210	1,566
Tanzania	381	302	301	401	339	423	304	364	418	395	370
Uganda	425	241	303	284	343	410	304	332	369	301	401
Other Africa	1,617	1,605	1,675	1,677	1,936	1,802	1,607	1,934	2,214	2,239	2,194
Oceania	**4,579**	**4,091**	**4,396**	**4,449**	**3,951**	**4,187**	**3,833**	**3,511**	**3,817**	**4,054**	**3,894**
Australia	1,760	1,389	1,565	1,400	1,480	1,281	1,367	1,273	1,308	1,362	1,354
Fiji	831	854	809	1,000	724	1,060	659	712	901	980	972
New Zealand	[4] 553	[4] 597	[4] 619	[4] 599	[4] 729	[4] 666	642	606	595	679	610
Tonga	647	489	706	800	453	588	561	481	555	669	510
Other Oceania	788	762	697	641	565	592	604	439	458	364	448
North America	**179,114**	**187,346**	**220,784**	**157,579**	**164,772**	**210,427**	**158,057**	**168,487**	**166,706**	**182,045**	**207,714**
Canada	10,096	12,688	16,863	13,772	13,609	11,191	10,786	11,390	10,791	11,385	11,039
Mexico	73,864	44,079	92,367	52,096	56,680	101,268	56,106	59,079	57,557	61,077	66,533
Caribbean	**82,367**	**114,011**	**91,361**	**74,074**	**73,296**	**73,301**	**67,379**	**73,306**	**74,265**	**83,281**	**101,632**
Antigua-Barbuda	646	835	908	770	972	929	3,234	2,008	953	957	812
Bahamas, The	406	400	585	651	547	546	577	505	499	533	570
Barbados	2,210	2,763	2,969	2,461	2,667	2,394	1,961	1,849	1,577	1,625	1,595
Cuba	35,996	69,708	29,754	15,585	15,054	10,858	8,209	8,978	10,599	20,334	33,114
Dominica	377	572	595	1,009	846	721	569	546	442	540	564
Dominican Republic	15,088	11,655	19,458	17,519	17,245	18,220	17,451	22,058	23,147	23,787	26,175
Grenada	787	1,240	1,206	946	1,198	1,120	1,066	1,154	980	934	1,045
Haiti	5,691	5,441	6,470	6,433	6,540	6,683	8,779	8,424	9,839	10,165	12,666
Jamaica	11,100	11,501	19,265	19,714	18,970	23,569	18,711	19,535	19,822	18,923	19,595
St. Kitts-Nevis	[5] 904	896	1,014	786	874	867	1,039	2,773	1,648	769	573
St. Lucia	379	545	572	953	1,193	733	586	662	484	499	502
St. Vincent & Grenadines	456	585	679	639	763	799	719	767	695	693	635
Trinidad & Tobago	6,040	6,106	5,973	5,225	5,154	4,599	3,532	3,156	2,900	2,831	2,891
Other Caribbean	1,287	1,764	1,913	1,383	1,273	1,263	946	891	680	691	895
Central America	**12,710**	**16,485**	**20,153**	**17,547**	**20,968**	**24,509**	**23,626**	**24,601**	**24,088**	**26,302**	**28,380**
Belize	661	930	1,033	1,063	1,120	1,289	2,031	1,585	1,492	1,353	1,385
Costa Rica	1,452	1,664	1,575	1,467	1,535	1,359	1,272	1,182	1,473	1,281	1,356
El Salvador	3,022	4,426	5,826	4,479	6,101	8,210	7,107	8,596	8,787	10,156	10,929
Guatemala	2,555	3,599	3,996	2,583	3,751	3,928	3,633	4,090	3,937	4,389	5,158
Honduras	1,598	1,626	2,727	2,545	2,552	2,358	3,186	3,619	3,405	3,726	4,532
Nicaragua	1,260	1,850	1,888	1,938	2,337	2,752	3,077	2,983	2,718	2,786	2,826
Panama	[6] 2,162	[6] 2,390	[6] 3,108	[6] 3,472	3,572	4,613	3,320	2,546	2,276	2,611	2,194
Other North America	77	82	34	90	219	158	160	111	5	-	130
South America	**28,908**	**32,954**	**41,764**	**35,344**	**39,717**	**35,913**	**35,446**	**36,087**	**37,460**	**39,058**	**41,874**
Argentina	2,789	2,787	3,732	2,856	2,815	2,236	2,065	2,029	2,141	1,844	2,187
Bolivia	652	699	1,030	751	730	820	750	823	918	1,006	1,079
Brazil	1,303	1,513	1,923	1,450	1,570	1,616	1,475	1,503	1,847	2,272	2,332
Chile	1,681	2,596	3,122	2,289	2,569	2,048	1,911	1,970	1,912	1,992	2,243
Colombia	7,212	8,272	11,032	10,637	11,289	10,335	8,608	9,658	11,020	11,982	11,408
Ecuador	5,632	5,302	5,732	4,383	6,133	5,129	4,127	4,243	4,164	4,482	4,516
Guyana	4,497	5,718	7,614	7,001	8,381	6,743	10,059	8,980	8,412	8,531	10,367
Peru	3,356	3,903	5,243	4,135	4,021	4,664	4,151	4,384	4,368	4,181	4,895
Uruguay	831	1,156	1,052	754	887	972	707	681	712	790	699
Venezuela	721	736	990	841	1,010	1,104	1,336	1,508	1,721	1,714	1,854
Other South America	234	272	294	247	312	246	259	308	245	264	294
Born on board ship	1	-	-	-	-	6	4	-	-	-	-
Unknown or not reported	-	-	-	-	-	-	10	26	31	1	3

[1] Prior to fiscal year 1982, data for Federal Republic of Germany and German Democratic Republic are consolidated under Germany.

[2] Excludes Danzig.

[3] Prior to fiscal year 1982, data for Mainland China and Taiwan are consolidated under China.

[4] Includes Niue.

[5] Includes Anguilla.

[6] Excludes Canal Zone.

- Represents zero.

NOTE. See Glossary for fiscal year definitions.

RESPONSE TO SENATOR SIMPSON'S QUESTIONS

1. **I ask this to clarify a discussion we had at the Hearing. Given the likelihood that legalization will cause an increase in demand for family connection visas three years from now, when the "Review of the Numbers" process would occur under my proposal, how will the INS balance the "Family Reunification" factors in the proposal (Section 201(c)(1)(A)) with the labor, economic, and resources factors (Section 201(c)(1)(B), (C))? Will the family factor effectively be given precedence over the other factors?**

   It is difficult to answer this question in the abstract since the facts before the Administration would presumably vary from year to year. However, in reviewing immigration trends over recent years in the regular review process, INS would need to consider the legislative history and intent behind the system enacted and the proportionate balance between family and independent immigration. Certainly, it would be difficult to argue that immediate family members should be kept waiting for extended periods for visas while persons with no ties to the United States are admitted.

2. **My proposed bill would require that all immigrants admitted through the point system apply from abroad, and would render visa applications in this category invalid after two years. The reasons for this are: 1) to reduce the incentive to come to the U.S. as a "nonimmigrant" and then adjust status here, and 2) to avoid the creation of long backlogs in the point system category. Should these two requirements (application abroad, and two-year expiration on applications) also apply to the present 3rd and 6th preferences, as I have amended them? The types of immigrants in this categories are quite similar, are they not?**

   The requirements in your proposal that selected immigrants apply abroad and that their visa applications are valid for only two years address two major problems frequently cited about the current system--circumvention of the system and unrealistic backlogs. Requiring that visa applications be made overseas for the selected immigrant category is probably unnecessary, however, if applicants are selected at random. An applicant under the point system would not have any particular advantage by applying in the United States and could not remain here solely because of such an application. We agree that some limitation on the validity of visa applications for the selected immigrant category is desirable because of the likelihood of large demand and changing point scores over time. This limitation, however, needs to be balanced with the administrative burden associated with scoring and rescoring applications every few years.

While we would defer to the Department of Labor on the potential labor market impact of your proposal, we believe that the current restrictions imposed on adjustment of status for third and sixth preference immigrants are adequate and that a requirement for overseas application could be too restrictive for those categories. Because of the labor certification required for these visa applicants, however, limited time validity of the application might be desirable as a means of reducing backlogs and unrealistic delays which prevent employers from bringing in workers without long waits for jobs for which the Department of Labor has certified that (1) qualified U.S. workers are unavailable, and (2) wages and working conditions attached to the job offer will not adversely affect similarly employed U.S. workers. Another possible means of reducing such backlogs might be to issue visas in those categories outside of any per-country limitations.

3. **Could you please describe the level of education now required of aliens who receive 3rd preference visas as "members of the professions." Do you believe that we should require a higher level degree from members of the professions, or should we simply require "exceptional ability" from these aliens as well?**

Service precedent decisions currently classify as a profession any occupation for which the minimum of a baccalaureate degree or equivalent is required. We believe that a higher level degree would be desirable for the classification of "members of the professions" under third preference, and that this would be preferable to an "exceptional ability" standard which is too subjective.

4. **In FY 1986, we admitted 110,900 aliens under the 2nd preference. Assuming that the changes that my proposal and Senator Kennedy's proposal make in this category (eliminating adult sons and daughters of permanent residents) had been in effect, how many immigrants would have been admitted in this category in this category in FY 1986?**

If second preference had been limited to only the spouses and minor sons and daughters of permanent residents, approximately 67,000 immigrants, about 40 percent less than the 110,926 admitted under the current system, would have been admitted.

Senator KENNEDY. Mr. Ogden.

STATEMENT OF JEROME C. OGDEN

Mr. OGDEN. Thank you, Mr. Chairman.

I am pleased to appear today to discuss Senator Simpson's proposal to modify the numerical limitations on immigration and the system for selecting immigrants. With your permission, I will submit my formal statement for the record and summarize briefly.

Senator KENNEDY. That will be fine. Your entire statement will be included in the record as if read.

Mr. OGDEN. The Department of State agrees with our legal migration system should be studied and analyzed. The proposal we are discussing today would make far-reaching changes in our legal migration system. The thrust of the proposal is similar to that of S. 1611, but would go much farther than that bill.

We do have some concerns about aspects of the proposal which I will outline briefly.

The Department is concerned that this proposal would put refugees and relatives in competition with each other, suggesting that we cannot achieve family reunification goals without sacrificing the humanitarian objectives of our refugee admission policy.

We are also concerned by the proposal to accord a preference to the parents of minor U.S. citizen children. Obviously, such a decision is a policy one, but we have already experienced the operational implications of doing so under the Western Hemisphere immigration system from 1965 to 1977 and we believe that those implications should be taken into account in considering whether this proposal has merit.

Also, we are troubled that the proposal contains no provision for a method of selecting among those that are qualified under the proposed nonpreference system. The proposal is silent on that issue. Having had to defend two lawsuits on the NP–5 processing system, one of which is on appeal, we urge that there be specific provision for a selection system to avoid almost certain litigation about whatever method we might establish by regulation in the absence of a specific provision.

Finally, I must state once again our serious concern over proposals which would add significantly to the administrative burden of our consular staffs abroad at a time when the Department is facing serious financial constraints.

At least in the first years of operation of this proposal were it to be enacted, there would be an increase in available family connection visa numbers, even though over time the total would almost certainly decline. Most of the additional visa numbers would represent additional visa issuances abroad. We believe that the number of applicants would be very large. All of this would place heavy burdens on our consular staffs under current conditions.

This concludes my remarks, Mr. Chairman. I would be pleased to answer any questions you or other members may have.

[Prepared statement, along with questions and answers, follow:]

PREPARED STATEMENT OF HON. JEROME C. OGDEN

DEPUTY ASSISTANT SECRETARY FOR VISA SERVICES

Mr. Chairman, members of the subcommittee, I am pleased to appear before you today to discuss, Senator Simpson's proposal which would make major changes in our legal immigration system, both in terms of the numerical limitation and in terms of the immigrant selection system.

This proposal is similar to S. 1611 in some respects but very different in others. Like S. 1611, it would separate relatives from non-relatives, establishing separate numerical limitations for each. Also like S. 1611, it would allow numbers not used under either limitation to be added to the total for the other limitation in the next fiscal year.

Also, both S. 1611 and this proposal would make changes in the classes of relatives entitled to preferential treatment, but the changes in this proposal would be more far-reaching than those in S. 1611. Under this proposal, parents of adult United States citizens would no longer be entitled to immediate relative status, outside the numerical limitations. Such aliens were included in the immediate relative class in 1965; between 1924 and 1965 they were accorded a preference within the quota system.

The current preferences for married sons and daughters of U.S. citizens and siblings of adult citizens would be eliminated prospectively but there would be a preference for those who had acquired the preference granted under existing law.

One change in the proposal warrants special comment. As I previously noted, parents of adult U.S. citizens would be eliminated from the immediate relative class. The proposed second family preference would include parents of United States citizens but would not require that the citizen be an adult. Thus, as written, this proposed new preference class would include parents of a U.S. citizen of any age, including a new-born infant. While such a change is clearly a policy question, there are several operational implications on which I will comment.

Between 1921 and 1924 the First Quota Law, this country's first numerical restriction on immigration, granted preference to parents of U.S. citizens without regard to the age of the citizen. The Immigration Act of 1924 restricted the preference to parents of adult (age 21 or over) U.S. citizens and the Immigration and Nationality Act of 1952 carried the preference forward in that form. The 1965 immigration amendments exempted parents of adult U.S. citizens from the numerical limitations on immigration. At the same time, the 1965 amendments contained an obscure provision, the significance of which was not recognized at the time, under which a native of an independent Western Hemisphere country could qualify for immigration as the parent of a minor U.S. citizen. An alien who qualified on this basis was subject to the 120,000 limitation on Western Hemisphere immigration but could be registered on the waiting list under that limitation.

This provision was a significant factor in the rapid growth of the waiting list under the Western Hemisphere, which reached over 300,000 by January, 1977, when the Western Hemisphere system was amended to make it consistent with the Eastern Hemisphere system. In the middle 1970's consular officers in Mexico estimated that as much as 40% of their immigrant visa applicants were parents of minor U.S. citizens and their non-citizen children. Also while there have not been formal studies of this subject, there was considerable anecdotal evidence at the time that the existence of this provision was a significant inducement to illegal entry and stay. For several years prior to 1977 the Department had urged that the Western Hemisphere immigration system be amended and elimination of this provision was one of the reasons for the Department's position at that time. We believe that restoration of this benefit for parents of minor U.S. citizens on a world-wide basis would produce both effects on a broader scale, because of their world-wide applicability.

A second point I wish to make relates to the proposed preference for immigrant investors. The Department continues to believe that there is a legitimate place in our immigrant selection system for such aliens. On the other hand, the Department also continues to have reservations about permitting an alien to qualify on the basis of a mere statement of intentions to invest. The nonpreference immigrant investor regulations have always required that the investment be at least partially underway and we believe that is a fair requirement. While an alien who qualified on the basis of a statement of intentions could be deported for failing to carry out the intended investment after entry, we question whether it is desirable to handle the matter by creating a new potential for both administrative and judicial review.

Turning now to the operation of the proposed new numerical limitation system, I should like to make several observations. Elimination of parents of adult U.S. citizens from the immediate relative class would reduce immigration in that class, at least for a few years. Over time, an increasing number of spouses and children of U.S. citizens would likely bring the total back to current levels and eventually it would surpass current levels. In the short run the family connection preferences would have a limitation slightly greater than under current law, but over the longer term the size of the limit would decline below current levels unless the periodic review procedure established a higher overall ceiling. Within the family connection system, the proposed first preference class would initially receive about 20% more numbers than under current law, but would likely remain oversubscribed. The proposed second preference class would likely become hopelessly oversubscribed as parents of minor U.S. citizens qualified. The proposed third preference class would be heavily oversubscribed with a much longer waiting period than at present under the current fifth preference class, because of the drastic reduction in available visa numbers -- slightly over 20,000 initially against over 90,000 used by current fourth and fifth preferences in FY 1986.

Under the proposed independent limitation of 100,000 the first independent preference -- current special immigrants -- would use about 5,000 numbers on the basis of recent statistics, with relatively little likelihood of a major increase over time. That would leave about 5,000 numbers to fall down to the proposed new second and third preferences. These preferences are similar to the existing third and sixth (occupational) preferences. With the anticipated fall down the numbers available to these two would be roughly the same as under current law -- 54,000 make current law; about 55,000 under the proposed new system. It is very difficult to get a sense of the potential demand under these two new preferences as the technical changes in the definitions and the amendment of the labor certification provision could affect demand. Perhaps the Department of Labor could be of assistance in that respect.

The fourth independent preference -- immigrant investors -- would be allotted 5,000 numbers. We have no basis for predicting demand under this class, but with the amount of investment required -- $2,000,000 -- it is not likely that there will be a massive demand.

The final independent class would be a new nonpreference class, not subject to labor certification. Qualification would be based on a point-count system similar to that contained in S. 1611. A major omission in the proposal is the apparent failure to provide any mechanism for the order of processing of qualified applicants. Current law calls for processing in chronological order of qualification. S. 1611 would call for processing by random selection. This proposal is altogether silent on this subject, presumably leaving the mechanism for order of processing to Departmental regulation. We find this to be an unsatisfactory situation, as we foresee litigation about whatever method we might establish. I would urge that the proposal provide explicitly for whatever method the Subcommittee might find most appropriate. We anticipate providing additional comments on the specific mechanism if it is clarified.

The Department is concerned about several aspects of this proposed new nonpreference class. First, the proposal would direct the Attorney General to establish the regulations to implement the point-count system. We consider it inappropriate to provide that the Justice Department promulgate regulations to direct consular operations abroad. Such authority should properly be with the Secretary of State.

Second, the 35,000 or more visa numbers for this class would represent an increase in workload for consular officers at a time when consular resources are limited.

Administration of the point-count system would also represent a workload increase and one of considerably greater magnitude than the additional visa issuances. We foresee hundreds of thousands, if not millions, of applications for registration, each requiring review, evaluation and, in some cases, outside investigation to verify claimed qualifications. It would be impossible to administer such a system under current resource constraints.

Finally, the Department is concerned by the potential reduction of the cap on preference relatives on the basis of refugee admissions numbers. The U.S. admits refugees in accordance with our traditional humanitarian and foreign policy interests under statutory criteria which differ significantly from the criteria applied to other immigrant categories. It would be unfortunate to create a system which suggests in the public mind that there is in any sense a competition between our refugee policy objectives and the family reunification purposes of our national immigration policy.

Refugee numbers are established through a process of annual consultation between the Administration and the Congress, as defined by the Refugee Act of 1980, in order to take account of needs which may change markedly from year-to-year. For example, the proportion of the 465,000 numbers which might be required for refugee admissions could increase rapidly if the Soviet Union in future years were to allow the emigration of substantially more Soviet Jews and Armenians.

Administratively, there is a further incongruity between refugee and immigrant numbers in that visa numbers are regulated on the basis of the fiscal year in which the visas are issued, whereas refugee numbers are regulated on the basis of the fiscal year in which the refugees arrive physically in the United States.

This completes my formal statement, Mr. Chairman. I would be pleased to respond to any questions you or other members of the Subcommittee may have.

RESPONSES TO QUESTIONS SUBMITTED BY SENATOR KENNEDY

QUESTION: My proposal makes a portion of the preference visas available to aliens with visa applications on file as of the Bill's enactment, even if their category is subsequently deleted. Another suggestion for handling backlogs has been to provide a large number of visas for three years only to those fourth and fifth preference visa applicants with approved petitions as of January 1, 1982. What are the merits and problems of each approach?

ANSWER : As posed, the question appears to be incomplete. The provision in the draft bill would accord a preference, with a relatively small percentage of the limitation, to beneficiaries of 4th or 5th preference petitions approved prior to the date of the proposal's enactment. The alternative proposal, as described in the question, would establish a short term allocation of visa numbers to benefit fourth and fifth preference beneficiaries whose petitions were approved prior to January 1, 1982. There is nothing in the question to indicate how beneficiaries of petitions approved after January 1, 1982, but before enactment of the proposal would be treated.

A proposal to clear the backlog of all fourth and fifth preference applicants whose petitions were approved prior to January 1, 1982, would involve roughly 300,000 aliens, virtually all of whom would be natives of Mainland China, India, Korea, Mexico, the Philippines or Hong Kong. This would be the case because for fourth and fifth preference applicants from other foreign states and dependent areas the visa issuance cut-off date is later than January 1, 1982. (In fourth preference visas are available for applicants with all priority dates; in fifth preference dependent areas with registration dates earlier than January 1, 1982, are already being processed under existing law. It is virtually impossible to make any further substantive comment without knowing what provision, if any, might be contemplated for beneficiaries of fourth or fifth preference petitions approved on or after January 1, 1982.

Administratively, a short-time backlog clearance proposal could potentially create staffing and other resource problems for us. The nature and extent of the problems, if any, would depend upon the other provisions with which it was associated.

QUESTION: The proposed bill eliminates the 4th and 5th preferences and contains a system to handle the existing backlog in these categories. In addition to this proposal, one idea for reducing the backlog is to require persons with approved applications in these categories to reregister (as an expression of their continued desire to immigrate). Do you believe that reregistration will help reduce the backlog? If so, by what amount?

ANSWER : A requirement for reregistration, coupled with a provision for revoking the visa petitions of those who failed to reregister within a specified time period, could reduce the size of the waiting list and, in fact, would almost certainly do so. It is not possible, however, to predict how great the reduction might be.

It does seem likely that the reduction would be greatest among those who had been waiting longest since they are the ones most likely to have changed their minds about immigrating or to have had other changes in circumstances which would result in their not doing so. The more recent registrants are less likely to have experienced any of the possible factors.

If this hypothesis is correct, then a reregistration requirement would become unnecessary in addition to being a very substantial administrative burden. The normal operation of the immigrant visa processing system would achieve the same result without the work involved in a reregistration scheme. Under the normal processing system, registrants (beneficiaries of approved visa petitions) whose registration dates are within or near the visa issuance cut-off date are instructed to assemble the civil documents necessary to support their formal application and to notify the consular office when they have done so. While the registrants are performing this task, the consular office is completing necessary administrative processing. Once the administrative processing is complete and the registrant has notified the consular office that he has all the required documents, the registrant is ready for final action and is considered for immigrant visa number allocation. The visa number allocation process is a monthly one and all registrants who have completed both phases of the preliminary processing are considered in it each month, in strict chronological order. Those registrants who have not yet notified the consular office that they have assembled the required documents are not considered for visa number allocation. They are, in effect, bypassed. If they do not respond for a period of one year, their cases are considered inactive and they cease to be counted as part of the "backlog". Thus, the normal immigrant visa process acts to purge the waiting list of those most likely to have abandoned their intention to immigrate. For this reason, the reregistration provision might well not be necessary.

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QUESTION: You testified that "[t]he Department ~~is~~ concerned that this proposal would put refugees and relatives in competition with each other..." What provision of the Simpson draft bill would do this and what change would you recommend to address this problem?

ANSWER : Senator Simpson's draft bill would establish a variable numerical limitation on family connection (now referred to as relative preference) immigration. For any given fiscal year the limitation would be 465,000 minus the total of immediate relative and refugee admissions for the previous fiscal year. The annual number of immediate relative admissions is determined by demand for immediate relative immigration and has been increasing annually at an average rate of about seven percent for the last decade. The annual number of refugee admissions, on the other hand, is determined by consultation between the Executive and Legislative branches as provided in section 207 of the Immigration and Nationality Act.

If the level of immediate relative immigration, on which there is no statutory limitation, continues to increase (and we believe that it will do so), the limitation on family connection immigration will decrease. As this occurs, we foresee that there will be pressure to limit the level of refugee admissions in order to mitigate the reduction in family connection immigration. At that point, there will be direct competition for immigration between relatives and refugees. We believe it would be most unfortunate if our commitment to refugee resettlement were to be adversely affected by our commitment to family reunification.

QUESTION: There are three ways to conduct the proposed nonpreference visa allocation: Chronological registration; a point system; random selection. Which of the three would be the most cost-efficient to the State Department? Please estimate how many individuals would seek to use each system and what different mixes by country, by age, or by occupation would result within the overall applicant pool or among successful applicants under each system.

ANSWER : First, with respect to the number of applicants who might register under a new nonpreference provision or what their age, occupational or national distribution might be, it is virtually impossible to make any forecasts or projections. It is likely that the number of applicants would be very large, possibly into the millions, depending upon the registration system employed.

As to the various possible systems for registration and selection, it must be understood that the two are distinct and that there are various possibilities for each. Only in one case would the two be connected to each other.

There are essentially two systems which could be employed for registration of applicant -- an unqualified system and a qualified system. Under an unqualified registration system, an alien would be required merely to assert an interest in immigrating to the United States and to furnish his or her name, date and place of birth and current mailing address. All aliens who submitted such a written statement would be registered. Under a qualified registration system, an alien could be registered only if he or she met certain requirements. The point count system contained in S.1611 and in Senator Simpson's draft bill are both examples of such a system, even though they vary in the details of the requirements to be met for qualification.

Either of these two systems would produce a pool of registrants. The unqualified registration system would produce a much larger pool than a qualified system. Also, the more rigorous the requirements for qualification, the smaller would be the resulting pool.

There are essentially three systems for selecting immigrants from the pool - chronological, random (the "lottery" system) and point count order.

Under a chronological system, the immigrants would be selected in order on the basis of the month, day, year and possibly hour and minute of receipt of their application. A chronological selection system could be used with either a qualified or unqualified registration system since, whichever system is used, it would be necessary only to record the exact arrival time of the application in order to establish each registrant's place in the chronological list.

Under a random selection system each registrant would be assigned a number consisting of an appropriate quantity of digits. Periodically, a computer programmed for the purpose would generate numbers on a random basis. The registrants to whom those numbers had been assigned would be those selected as immigrants for the period in question. This is the selection system contained in S.1611. An at random selection system could be used with either a qualified or unqualified registration system since, whichever system were used, it would be necessary only to ensure that each registrant was assigned a number for comparison with the numbers generated at random by the computer.

The third selection system - selection in order of point score - can be used only if the registration system involves a point score requirement for registration. Under such a system all applicants for registration who met the minimum point score requirement would be ranked in order of actual point score and would be selected in that order, with those scoring highest selected first.

All of these possible systems would involve administrative costs, although it is virtually impossible to quantify them at this time. Also, it should be noted that any costs associated with any of these systems would be added on to the existing costs of operating-the immigrant visa system since no comparable function now exists and any of these proposals would, if adopted, supplement the existing system without replacing all or a part of it.

An unqualified registration system is probably less costly than a qualified one even though it would produce a much larger pool of registrants. The unqualified registration system requires only the clerical function of data entry to create the record of registration. Since there are no requirements for registration, there would be no need to adjudicate the application substantively. Because of the potentially vast number of registrants a considerable work force could be required to perform the data entry function, but they would likely be relatively low-paid clerical workers.

A qualified registration system would produce a smaller pool of registrants. As a result, the clerical work force required to perform the data entry function would likely be smaller than under an unqualified registration system. On the other hand, adequate staff at a higher grade level would be required to review and evaluate each application for registration to determine whether the applicant actually met the requirements for registration.

In this connection, it should be recognized that a qualified registration system of the sort contemplated is perhaps the most conducive to fraudulent claims that could be imagined. Every element which has been suggested as a factor for awarding points under the point count systems under discussion now is open to fraud. Birth certificates can be altered to show an individual to be younger than he or she actually is. School records can be forged or altered to reflect non-existent educational background. Documents can be manufactured to reflect nonexistent vocational training or work experience. The Department has already had to deal with all of these phenomena in various contexts in various parts of the world. The Department has even had experience with English-language tests being taken by imposters posing as applicants for student visas.

All of these schemes can be dealt with. Investigators can be sent to vital records offices to verify birth records, to the administratives offices of institutions of learning to verify school transcripts, or to claimed places of prior employment to verify work experience. Security measures can be established to prevent imposters from taking English language tests. All of these activities are extremely labor-intensive, however, and the costs of engaging in them on any significant scale could be considerable.

The costs of administering the various selection systems would not be excessive. A chronological selection system could likely be administered as part of the existing system for administering the numerical limitations generally. Either an at random selection system or a system of selection by point score would require a new mechanism not now in existence.

QUESTION: What changes would the Department recommend in the area of investor immigration, either from current law or from the draft Simpson bill?

ANSWER : As we testified on December 11, 1987, we believe that there is a legitimate place in our immigrant selection system for immigrant investors. The size of that place and the amount of money required for qualification are matters on which we are not well placed to comment. Under Senator Simpson's proposal, the number would be small - 5,000 maximum - and the qualifying investment would be large - $2,000,000 minimum. Thus, the provision would result in the importation of significant venture capital without meaningful reduction in immigration by other classes of qualified immigrants. We do have, as previously noted, very strong reservations about allowing an alien to qualify as an immigrant investor on the basis of a statement of intention to invest after admission.

Aliens seeking to qualify as nonimmigrant treaty investors under the provisions of section 101(a)(15)(E)(ii) of the INA are required by the express terms of the law either to have already made the investment or to be actively in the process of making it. The Department's regulations under which an alien may qualify as a nonpreference immigrant on the basis of an investment contain the same requirement. As a result, aliens who have sought to qualify under either provision have had to commit themselves to a course of action in order to do so. Under Senator Simpson's proposal, the alien would merely have to express an intention to do so in order to qualify.

Senator Simpson's proposal does contain a provision for deporting an alien who gained admission on the basis of a statement of intention to invest and who subsequently did not carry out that intention. With respect to this provision, we defer to the views of the Immigration and Naturalization Service.

QUESTION: I ask this question to clarify a discussion we had at the hearing on December 11, 1987.

In my proposal, the State Department would be required to consult with the Attorney General in reviewing the numerical limitations on legal immigration. It is obvious that the State Department would pay attention to the family reunification (new §201(c)(1)(A)) and foreign policy (new §201(c)(1)(D)) factors in the report, but I also believe that you should pay attention to the labor market and natural resources factors as well. How would you propose to assess the demographic, resources, and environmental factors?

ANSWER : As we read the text of the proposal, the Attorney General would bear primary responsibility for preparing the report to the President and the two Judiciary Committees and would consult with the Secretaries of State, Labor and Health and Human Services in doing so. In that process, each Department would bring to bear its particular expertise consistent with its institutional responsibilities.

We do not anticipate that the Department of State would express a position on domestic policy issues such as labor market needs or demographic or environmental considerations. These are undoubtedly factors which deserve to be taken into account, along with others, in determining this country's immigration policy. We do not presume to believe that the Department has the expertise to make informed judgments on such issues, nor is it a part of the Department's institutional responsibility to do so. We doubt that any single agency of government has the expertise to make informed judgments on all of the factors which deserve consideration in this respect. That is, we presume, the reason that both this proposal and the similar provision in S.1611 call for the report to have input from several agencies, rather than by any single agency.

The Department can offer its expertise with respect to any foreign policy considerations which might be relevant and can provide both statistical and operational information concerning patterns and levels of demand for immigration. The Department of Labor would appear to be the appropriate agency to provide information on domestic labor needs. Possibly the Department of Justice or Health and Human Services can provide information on demographic and environmental factors which merit consideration. If not, it might be advisable to add the Census Bureau, the Department of the Interior and/or the Environmental Protection Agency to those participating in preparation of the report. In any event, we assume that the Attorney General would seek their expert advice on these issues, if he considered it necessary.

QUESTION: One potential provision for the bill would provide for a lottery to admit a number of individuals (perhaps 50,000 per year) who would not otherwise qualify for visas under the family connection or independent categories. The lottery would permit aliens determined to immigrate to the U.S. the opportunity to do so despite their failure to qualify under any of the other categories (and would thus be reminiscent of "Classic Immigration"). As contemplated, the lottery would be available only to persons in countries which did not exhaust the visas allowed under the preference limitations for individual foreign states.
Do you support or oppose the idea of a lottery, and how might such a system be administered?

ANSWER : For a variety of reasons, the Department could not support the idea of a lottery. Such a system would be unfair to a number of countries and would be a considerable administrative burden for the Department.

Technically, under such a proposal natives of all countries and other areas except Mainland China, the Dominican Republic, India, Korea, Mexico, the Philippines and Hong Kong would be entitled to register for the lottery. Since there would be no qualification required for registration, a simple letter expressing a desire to register would seem to be sufficient for the purpose. Unless the number of registrants was limited by law, the number could (and likely would) be enormous, probably numbering into the millions. Moreover, unless the law provided for both a time limited registration period or periods and for a time limit on the validity of a registration, registrations would continue to flow in indefinitely and would remain valid indefinitely once received. Over time, the number of registrations could become literally astronomical.

Under a true lottery system, the selection process from among the registrants would be on an "at random" basis. As we envision it, each registrant would be assigned a registration number -- probably an eight digit number, given the probable ultimate total of registrants. Periodically, those to be selected would be determined by having a computer programmed for the purpose generate the requisite quantity of eight-digit numbers. Holders of the numbers generated would then be processed under the normal immigrant visa process.

In this connection, we think it important that the impact of section 212(a)(15)--the public charge provision -- on such aliens be considered. All immigrants are subject to consideration under this provision. In order to establish eligibility under section 212(a)(15) a visa applicant is required to establish that he or she is not likely to become a public charge because he or she has

(1) personal resources sufficient for the purpose;
(2) financial support from a person in the United States (a "sponsor");

(3) pre-arranged employment or, at a minimum, possession of a job skill in short supply in the U.S. which makes it likely that the applicant will have little difficulty finding suitable employment; or

(4) a combination of two or more of the above.

Competitors in this proposed lottery would, by definition, be aliens without potential sponsors, without pre-arranged employment and without needed job skills. Realistically, virtually none would be able to live off their personal resources. Thus, most such aliens would have to be found ineligible to receive a visa under section 212(a)(15) in the absence of an explicit Congressional mandate to exempt them from section 212(a)(15) or to modify its application with respect to them.

Senator KENNEDY. Let me ask both of you whether you have some position with regard to having an overall ceiling. We have wrestled around with that for some period of time, and we are still wrestling with it.

And, talking about wrestling, we have got one of the real grapplers, Senator Simpson. If you would like to make an opening statement—we are just beginning the questioning. We have had some good testimony here this morning. Commissioner Nelson expressed his view about some of the issues that might be coming up on the continuing resolution relative to refugees and expressed his opinion on that. Mr. Ogden spoke for the Department of State. We were just about to begin our questions, but I will recognize you for whatever comments you would like to make.

Senator SIMPSON. Well, Mr. Chairman, you remember when I was a freshman member of the committee and you were chairman, and you used to come in and say that you were "at the White House." Do you remember how you used to do that a lot?

Senator KENNEDY. I used to be there a lot. It has been a long time, though. [Laughter.]

Senator SIMPSON. Well, that's why I'm late. You always say that, and it is the most impressive thing you can say: "I'm sorry I'm late. I was at the White House." But you used that on me a lot, so I thought it would be appropriate.

I do want to just say a few words.

OPENING STATEMENT OF SENATOR SIMPSON

Senator SIMPSON. I want to thank you for this opportunity to receive some expert testimony on these new proposals on legal immigration reform. This is another area where you and I have talked over the years.

I personally appreciate your accommodation, a rather singularly unique accommodation, of this request for a second hearing. You didn't need to do that, and I very much appreciate it. I just want that clearly part of the record.

I think that our legal immigration system does not serve the national interest as well as it could, and I think it is our duty to see if we cannot do something about that.

Our present system has an inherent growth that is apparently not fully supported by the American public. The system has been dominated by immigrants accepted on the basis of family connections, from only a few countries, in a few parts of the world. And the few immigrants that we do accept for labor market purposes are screened in a very haphazard and inefficient manner, in my mind.

The public seems to indicate that they want to reduce not only illegal immigration, but legal immigration. And I am not talking about sealing borders or anything of that nature. I think we should maintain legal immigration at its current, generous levels. I don't have any problem with that. As one of the parts of this hearing, let's find out if the level needs to go up or if it needs to go down, but certainly it is generous at this time.

I don't believe sufficient justification exists for increasing the present level of immigration, based on what we know at this point, if we are listening to the public preference. However, the present system allows for an inherent and unchecked growth in the overall level of immigration, and I believe that any new immigration reform bill must take that into careful account.

We have 90 percent of all legal immigrants arriving in the United States as a result of family connections. And while I really unswervingly believe that we should preserve legal immigration for the immediate family—there is no question about that, and no one is challenging that—of legal residents, that is, for spouses and children of citizens and permanent residents and for the parents of citizens; I also believe that the more distant relatives of U.S. residents should not receive special immigration benefits based on these family connections, but instead should be chosen for the skills and attributes they possess which might better serve the Nation.

I assure you carefully that I speak now about immigration in the national interest and not merely in the interest of the particular alien. We long ago decided somehow in the rest of public life that nepotism is not sound public policy. We no longer believe one should attain admission to a fine private college because his or her parent went there. That type of thing has gone out, especially politically. But nonetheless, our legal immigration system continues to embrace this concept with greater vigor, and whole-heartedly.

Eighty-five percent of all legal immigrants now come from only two major areas of the world, Latin America and Asia. I am not one whit opposed to immigration from those parts of the world, yet I am not in favor of particular nationalities having a lock on the immigration system, either.

Visas should be distributed worldwide without favoritism or built-in bias for any particular group or groups, and the current family connections immigration system has caused and would perpetuate imbalance which we see today.

So I simply believe, Mr. Chairman, that a greater proportion of legal immigrants should be chosen because of their particular skills or attributes which would benefit the Nation as a whole. The proposed bill would reserve 100,000 visas per year for immigrants who possess skills which are sought by U.S. employers or which have proven over the years to be appropriate. These are things we talked about with the President of Notre Dame, Ted Hesburgh.

So these are the things that are vital to making an immigrant become a useful and productive member of our society. I appreciate and will invite comments on how we achieve the goal. I encourage a discussion of these proposals which try to take into consideration the interest groups' point of view but also acknowledges the preference of the American public. I do not think we want to let ourselves fall prey to the usual "inside the Beltway" mentality on this tough issue, and I pledge my efforts to assure that that does not occur.

So as we get to this new national debate on legal immigration and the national interest and seek an "appropriate level" of immigration, these are the things we should be discussing. We should know that we start with the most generous immigration policy in the entire world, and I am very proud of that. I am not proposing we reduce the number of immigrants; millions come from all over the world to share this strong desire to immigrate to this country and to share our economic prosperity and our freedom, but we cannot take them all. We can accept only a small percentage of them. And those that should come now should have a new emphasis on the manner that best serves the broad national interest.

Mr. Chairman, I do thank you. I have spoken a little longer than I anticipated, and I thank you very much for holding this hearing; that was a personal accommodation.

Senator KENNEDY. Thank you very much, Senator Simpson.

Let me ask both the Commissioner and Mr. Ogden, we heard at our October hearing a statement that was made by Professor Fuchs of Brandeis, who has had a long association with both this Committee and immigration policy, and I quote: "Refugees should never be made to compete with relatives of U.S. citizens. When we are saving lives of people from torture, we should not do so at the expense of relatives of U.S. citizens or the immediate relatives of permanent resident aliens. Where we are reuniting families, we should not do so at the expense of persons whose lives we may save."

Commissioner Nelson, do you have a reaction to that?

Commissioner NELSON. Certainly we all respect Professor Fuchs for his expertise and knowledge in this area.

I think, again, so many of these words—like you started to ask, I believe, before Senator Simpson came in, about my opinion on a cap, and I guess the refugee competing with the immigrant—I mean, sometimes, it is in definition. If you look at a cap as a definition of cutting way back on immigration, that's one thing; if it is a cap at a higher floating level, as I think Senator Simpson is talking about, that is another. I would say the same with the refugee versus the immigrant.

I don't know that anybody is thinking about competition per se. Obviously, we come in every year with refugee consultation numbers and consult and develop a number. So I don't think it is really necessarily a competition thing. Again, you can argue it both ways, but I would say that the idea of grouping the refugees and the immigrants—and I believe, if I am not mistaken, that Australia and Canada and other countries do group them in that sense—they are people coming into the country. So I don't think there is any thrust to take away the refugee flow, rather keep that at a fair, reasonable and high level.

So to answer specifically, I don't see that that is necessarily a problem, and I think we can avoid the actual competition concern.

Senator KENNEDY. Well, as you well know, if you take the three general categories, we have the immediate relatives, on which there is no limitation in terms of numbers; and then we have the second category, which are the preference visas with a cap of 270,000, and then we have the refugee admissions ceilings, which are the result of consultation with the President. So they are different. We have a cap in one area, we have consultation in a second area. We don't have either in the third area. So there is somewhat of a mix.

I am just interested in whether you are satisfied with that kind of structure. We may move around, which our bills do, in terms of how we prioritize the various groups in those areas. But are you satisfied with the basic structure, or would you want to alter it or change it?

Commissioner NELSON. I think it can be improved upon, and I think both your bill and Senator Simpson's bill intend to do that. Like everything, if we move along, adjustments are necessary and appropriate. I think certainly some of these areas like the fifth preference and so forth, we have to balance it. I think there is a feeling that we probably ought to allow more of an independent category, still with the prime emphasis on family people coming in.

So while I think the balance is there now, I think that it can be improved upon, and it seems to me you are both moving in that direction, and the administration agrees with that and wants to continue to work with you to try to do it. Tough answers; the questions are simple, but the answers are very tough.

Very clearly—if I might, one last point—as Senator Simpson just said, I think we all agree, the administration certainly, that we want to maintain our current high, generous level, certainly if there are caps, at appropriate levels. We are talking high, high legal immigration; in that we are generous. And I think that we always have to keep that in mind as we go forward, and no one should be thinking in terms of cutting back on the basic legal immigrant heritage here.

Senator KENNEDY. Could you give us a rundown on the usage of immediate relative categories? Do you have that?

Commissioner NELSON. Mr. Ogden can give you that.

Senator KENNEDY. Do you have those? Do you want to provide them for the record, or have you got them quickly?

Mr. OGDEN. I can give you some rough figures and provide more detail later if you'd like.

Senator KENNEDY. Yes.

Mr. OGDEN. In fiscal 1986, about 218,000 immediate relative immigrants entered into the United States. A large number of those were adjustments of status in the United States. Of those, about 173,000 were spouses and children of American citizens, and about 45,000 were parents, the group that would be very much affected by Senator Simpson's proposal.

So, looking over the past few years, there has been an average annual growth of about 7 percent in the immediate relative category overall in terms of growth in immigration.

Senator KENNEDY. Over what period of time is the 7 percent?

Mr. OGDEN. From 1979 to 1986. Over a longer period of time, the growth has been consistent. Looking back to 1970, we had about 80,000 immediate relatives annually, and of course, now it has risen to about 220,000 annually.

Senator KENNEDY. What is your flow line? What is your projection for the next period of time?

Mr. OGDEN. I think over the long term, that average would hold up. There are wide fluctuations every year.

Senator KENNEDY. Approximately 7 percent increase per year?

Mr. OGDEN. Seven percent is as good an estimate as any over the long term. As I was about to say, there are fluctuations from year to year. We have had as high as 12 percent, and as low as negative 1 percent over the past few years.

Senator KENNEDY. That is a general ball park figure.

Mr. OGDEN. That is our best guess. It would probably be a little higher for spouses and children, maybe 7 percent, based on post-1979 figures. The average annual percent increase for spouses and children was 7.6 percent, and that for parents was 5.2 percent.

Senator KENNEDY. OK. Do you want to continue down in the other categories? What are we getting? The others are limited to the 270,000; is that correct?

Mr. OGDEN. Yes.

Senator KENNEDY. Generally, can you give us an idea of the backlog?

Mr. OGDEN. As Commissioner Nelson mentioned, we have over 2 million on the waiting list now; about 367,000 are second preference; and 1.3 million are fifth preference. The other categories are much smaller than that. So our biggest backlog is the fifth preference brothers and sisters; next is second preference.

Senator KENNEDY. And of the brothers and sisters, as I think Commissioner Nelson indicated, what percent of those are married brothers and sisters of the ones that are waiting?

Mr. OGDEN. I think the majority are.

Senator KENNEDY. I thought it was small.

Mr. OGDEN. Are you talking about unmarried or married?

Senator KENNEDY. Let's take both.

Mr. OGDEN. I think unmarried is about——

Senator KENNEDY. I thought I saw somewhere where approximately 70 percent were married and the others were unmarried. Wasn't that your testimony, Mr. Commissioner?

Mr. OGDEN. About 70 percent, Mr. Chairman, are married brothers and sisters; about 30 percent are unmarried. About 40 percent of recent immigrants in the fifth preference are the actual brothers and sisters, and about 60 percent are the dependents.

Senator KENNEDY. OK. And just quickly on the refugees, do you want to give us a quick overview of where they are coming from?

Mr. OGDEN. Well, admissions under section 207 in 1987 totaled 64,831.

Senator KENNEDY. Of which—what percent of those are Asian? Could you give us just generally?

Mr. OGDEN. I don't have those with me.

Commissioner NELSON. It would be about half, probably, close up, high 20's, 30,000 or so, of Southeast Asians.

Senator KENNEDY. OK. And the rest are——

Commissioner NELSON. Are spread out—European, Soviet, Near East. But probably at least half, maybe even higher.

Senator KENNEDY. I know the State Department is concerned about the cost of administering the point system during times of a shrinking budget. Wouldn't there be a way to charge the applicants for the costs of registering for the point system?

Mr. OGDEN. I think conceptually, Mr. Chairman, that makes sense. We charge for immigrant visa applications. If there were a fee for applications for the independent category, I think it wouldn't go against what we have done in the past.

Senator KENNEDY. Well, we will certainly consult with you about what is a reasonable fee, but I think that would be something that we should take a look at.

The point system is likely to have many registrants, certainly more than the 50,000 numbers available. I imagine there would be a registration period and then a random computer selection from the pool of qualified registrants. The State Department has done an excellent job of administering the NP-5 program with no additional resources.

Have you given any thoughts to how you would administer this program if given the resources?

Mr. OGDEN. Well, we have given it some thought and had a lot of discussions about it, Mr. Chairman. I wouldn't say we've gotten to the stage where we are doing any detailed staff work.

But there are basically three ways that you could administer this program, depending on which version of the legislation finally comes out. If we are constrained to do it chronologically, I think we are going to find some great difficulties.

The problem with chronological registration is that at 12 midnight on the day that you open registrations, you are going to have everybody clawing and kicking and screaming to get to the head of the line, because they will be aware that the numbers will be far fewer than the applicants. We also have to register them in terms of qualifying them before we can actually register them. I doubt if we could ever catch up with the line, because we wouldn't have enough staff to go through the detailed analysis of each case as the line grew longer. So there are several problems on the chronological side.

Another way would be to qualify people in terms of the number of points—the higher the points, the closer to the front of the line they would get. But I think that there are also some severe problems with that, in terms of fairness to the applicants and also in terms of administration. You could find an applicant who had been told that he was high up on the list, and then the day after he was told that, another applicant would come in and have a higher point score and bump him off the list or delay his departure. So there would be problems with that, too.

Nonchronological, or I think "at random" is the term that is used in S. 1611, gives us a lot more flexibility. As you have mentioned, Mr. Chairman, there would be possibilities then of having, say, an open season where all people could send in their applications. There would be some kind of computer-generated random selection. We could then treat those cases individually at the posts abroad with the sort of attention they require, and we would have the time to do it.

No matter what system we use, it would be extremely labor-intensive, I think, in terms of the applications. The NP-5 program had over 1 million applications for 10,000 visa numbers in about 1 week's time. We foresee the possibility, the strong probability, of millions of people who would seek to qualify for the independent category. A measurable percentage of the world's population probably has the qualifications. So it would be a question of selecting. The question of selection would be much more of an administrative problem for us than the actual issuance of the visas, 50,000, 35,000, depending on how many there were.

If we had our preferences, we would like to have some guidance in the law because as you are aware from my previous testimony, we had two lawsuits on the way we set up the administration of the NP-5 program. We won them both. One is on appeal now, I think. But to avoid litigation, it would be better, I think, to have some guidance in the legislation, or the legislative history, on how to administer the program.

And at this point, as I say, we haven't done any real detailed staffing, but I think our preference would be to have some kind of nonchronological system to give us the flexibility we need.

Senator KENNEDY. I think that makes sense, and we have considered some different proposals. We might take a percentage of the numbers that have been used by a particular country; if they reach 75 or 80 percent of possible preference visas, perhaps those countries might not be eligible. We will run those by you and find out if they reflect a disturbing pattern or something, if we could try and set some kind of criteria. But I would hope we could work out something that would be satisfactory in terms of giving you some guidance.

Thank you very much.

Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman.

Just a quick comment, and then I will ask a few brief questions because we want to get into that next panel while the Senators are both here.

You both mentioned in your testimony the proposal which provides a preference to the parents of U.S. citizens, whether the citizens be minors or adults. I want to assure you that that was an oversight or an error in the drafting of the proposal and that such a provision really would not be in any bill that at least I would be involved with. We are certainly doing it in a different way. That preference would be provided only to the parents of adult U.S. citizens.

You have pointed out the oversight. I agree that you have certainly pointed out something that was not intended by me.

Now, the Chairman was asking something there, and I will follow it. Given the likelihood that legalization is going to cause an increase in demand for family connection visas—and where these numbers are going I don't know, whether they will stay within that norm with legalization of 1.9 million to 2.3 million or whatever it may be—how will the INS balance this family reunification factor in the proposal here in the bill, along with the labor, the economic, and the resources factors? Will the family factor effectively be given precedence anyway over the other factors? We are already in that type of emphasis. Is that going to continue even with this?

Mr. OGDEN. We have done some informal projecting out of how your proposal would work out, and initially, if in the fiscal year that such legislation came into existence, the patterns were the same as in the last full fiscal year for which we have records, there would actually be a small increase in the number of family connection visas. There would be an overall increase in the number of visas we would have to process abroad because of the independent category.

But over time, I think that those family connection visas would gradually be pushed down by the increases, just the annual percentage increases in the growth in the immediate relative categories, even though the parents have been taken out and put into the family connection category.

So over time, all things being the same, we project that that family connection category would be squeezed.

Senator SIMPSON. Mr. Nelson.

Commissioner NELSON. Senator Simpson, I'm not sure that I will be able to elaborate on that; just a couple of sort of general comments, working around the fringes. But as I mentioned in our prepared testimony, clearly, as we move forward with your bill and Senator Kennedy's in the legal immigration area, we have to consider legalization and its impacts, likewise with the other aspects of immigration reform. So we need to be alert to it, and that might well be something that we need to consider as we make changes. As you say, if 2 million apply, there will be a lot more family and second preference and other things. The numbers, Mr. Ogden probably touched on.

Under the existing system obviously, we will deal with them, and those that are direct family members will come in without the cap; the others will have to fit in there, which could——

Senator SIMPSON. Well, I guess I was saying that when we do the legalization, and we are looking at family connection, and we are dealing with the "review of the numbers" process in this proposed legislation, what is going to be the emphasis? Is it going to go flipping back to the family factor only, or is it going to include labor, economic, and resources factors? That is what I am asking.

Mr. OGDEN. Well, the labor category would be independent, so there wouldn't be any impact on the labor category no matter how large the demand became for family connection visas. There would still be 100,000 per year for the labor category.

Senator SIMPSON. Well, we are talking about the independent category.

Mr. OGDEN. The independent categories, yes.

Senator SIMPSON. Yes, but that isn't all labor. We are talking about various other factors.

Mr. OGDEN. Special immigrants have maintained pretty much the same level for many years of about 5,000.

Senator SIMPSON. Well, let me go on. I think we ought to visit about that. I think we are speaking past each other on that one. It might be my fault, too.

But here is a question that is important to me. You remember we dealt with marriage fraud, and previously you noted that 33 percent of a sample group of "immediate relative through marriage" visas appeared fraudulent, almost one-third. And now we have the new marriage fraud law. Senator Simon, as I recall, worked on that very diligently.

Are you noticing any decrease in the number of applications for immediate relative visas based on the alien's marriage to a U.S. citizen?

Mr. OGDEN. Well, we don't know what the factors involved are in the last year's immediate relative numerical figures, but there was an actual almost standstill in the immediate relative categories last year, in fiscal 1987—in fact, a 0.2 percent decline in the number of immediate relatives applying, according to our figures. Perhaps it is the fraud; we don't know.

Senator **Simpson**. But something is having an effect.

Mr. **Ogden**. Something; although I would also point out, Senator Simpson, that there have been other years when there have been negative periods of growth in the immediate relative category. Back in 1981, we had a minus 1.3 percent growth in the immediate relative catagories. So we are not yet ready to draw any conclusion on that.

Senator **Simpson**. Another question, then. Obviously the proposal that I would present is going to have some new administrative activity in it. There is a new independent immigrant category, and one for investors of $2 million, and also a new grounds of deportation for those aliens who receive such a visa but then don't go ahead and make the investment.

Just what is the INS' ability to enforce such a provision, and are there any improvements to that deportation language required?

Commissioner **Nelson**. Senator, as we testified, we concur with your conception of independent categories, including the investor and so forth. With respect to the details of the deportation, I cannot comment; maybe others can. As usual, the primary aspect is providing the resources in terms of the investigators to be able, just as with employer sanctions, to do the job.

We will have to look further at the language itself and provide comments if we feel there are any changes. But I think we can basically carry it out. There might well be fine-tuning changes.

Senator **Simpson**. Well, under both Senator Kennedy's bill and mine, a change will be made in the category where we talk about the narrowing of the definition of the current second preference by eliminating the adult sons and daughters of permanent resident aliens. Spouses and children, of course, of permanent resident aliens are still retained; no difference.

I guess I am just asking if you could furnish for the record if the changes suggested here had been in effect, how many immigrants would have been in this category in fiscal year 1986? You can furnish that for the record if you do not have it now.

Mr. **Ogden**. I have a quick answer, Senator.

Senator **Simpson**. Yes, go ahead.

Mr. **Ogden**. In fiscal year 1986, about 112,000 second preference numbers were used, and of those about 30,000 were for sons and daughters over 21 years. So it is about a 25 to 30 percent part of the second preference category. In addition, there were also a few thousand children of these unmarried sons and daughters who received second preference visas derivatively.

Senator **Simpson**. So within that, if this had been in effect, our proposal, how many immigrants do you say would have been admitted in that category?

Mr. **Ogden**. About 43,500 were spouses, and about 38,500 were children. So that adds up to 80,000 admissions or so. Any second preference numbers unused for sons and daughters would have permitted more issuances to spouses and children.

Senator **Simpson**. OK. I thank you, and I will submit some questions about the point system, consular officer problems, and any difficulties with that. And an application fee, I think, is important, perhaps in the range of $200, something like that. That will be subject to a lot of discussion, and we want to discuss with you suggestions you have for how we handle that number of applications and how to get to a limiting effect without being discriminatory.

Thank you very much, Mr. Chairman.

Senator **Kennedy**. Thank you, Senator Simpson.

We thank both of you very much for your helpful testimony.

[Material submitted for the record follows:]

INCREASE IN NON-NUMERICALLY LIMITED IMMIGRATION

Immediate relative (spouses, children and parents of U.S. citizens over 21 years of age) immigration (visa issuances and adjustments of status) has shown an average annual increase of 7% over the past seven years:

Fiscal Year	Immediate Relatives	Percent of change over previous year
1979	136,939	
1980	151,743	+10.8
1981	149,774	- 1.3
1982	163,467	+ 9.1
1983	173,815	+ 6.3
1984	178,843	+ 2.9
1985	201,213	+12.5
1986	218,658	+ 8.7

Separating parents, the figures are:

Fiscal Year	Spouses/ Children	Percent of Change	Parents	Percent of Change
1979	104,699		32,240	
1980	117,903	+12.6	33,840	+ 5.0
1981	114,136	- 3.2	35,638	+ 5.3
1882	128,244	+12.4	35,223	- 1.3
1983	138,799	+ 8.2	35,016	- .6
1984	144,093	+ 3.8	34,750	- .8
1985	161,191	+11.9	40,022	+15.2
1986	173,101	+ 7.4	45,557	+13.8

The average annual percent incrase for spouses/children is 7.6%; for parents the average increase is 5.2%.

The FY-87 immediate relative visa issuance total at Foreign Service posts is 143,075, compared with 143,396 during FY-86. There has been no increase, and in fact a slight decrease of 321 (-.2%). Preliminary INS data confirm no increase in FY-87 immediate relative adjustments also. We cannot offer any specific explanation of why there has been no immediate relative growth during the past year, but note that the rate of increase in FYs 1985 and 1986 was above average. Perhaps the FY-87 figure shows simply an adjustment to the average rate of growth. The Marriage Fraud Amendments Act of 1986 may be having an effect as well by discouraging some would-be immediate relative applicants whose proposed basis for immigration may be questionable.

Over a longer term immediate relative immigration has shown an increase of about 7% as well, from a total of 80,708 in FY-70 to 151,743 in FY-80, to 218,658 in FY-86. We see no reason to expect that immediate relative increases will not continue at a roughly consistent pace.

ACTIVE IMMIGRANT VISA REGISTRANTS IN THE PREFERENCE/NONPREFERENCE CATEGORIES AS OF JANUARY 1987

The attached table shows the number of active immigrant applicants registered at consular offices abroad in the numerically limited preference/nonpreference categories. These figures have been compiled from the annual reports of registrants submitted to the Visa Office by Foreign Service posts in January 1987.

Category	January 1987 Totals (and % of total registrants)	January 1986 Totals	Increase Over Past Year (& % of change)
FIRST	15,800 (.8%)	11,764	4,036 (34.3%)
SECOND	367,465 (17.9%)	346,728	20,737 (6.0%)
THIRD	31,442 (1.5%)	28,460	2,982 (10.5%)
FOURTH	107,021 (5.2%)	95,851	11,170 (11.6%)
FIFTH	1,305,119 (63.6%)	1,210,656	94,463 (7.8%)
SIXTH	58,442 (2.8%)	48,740	9,702 (20.0%)
NONPREFERENCE	167,387 (8.2%)	161,276	6,111 (3.8%)
TOTALS	2,052,676 (100%)	1,903,475	149,201 (7.8%)

During the past year all preference categories reflect an increase in the number of registrants. It should be noted that about 67% of third preference immigrants and 25% of the sixth preference immigrants are adjustment of status cases at INS district offices; cases being processed for adjustment by INS are not included in VO registration totals. The nonpreference category, in which visa numbers have not been available for several years, shows only a slight increase; note that the nonpreference figure given above does not include any registrations under Section 314 of the Immigration Reform and Control Act 1986.

About 53% of active third preference registrants at Foreign Service posts are in the Philippines chargeability; some 77% of nonpreference cases are in the Mexico chargeability.

The dozen applicant chargeability areas with the highest number of active registrants are listed below; these areas together represent 76.4% of the total:

MEXICO	381,530
PHILIPPINES	380,244
INDIA	176,966
KOREA	139,984
VIETNAM	109,054
CHINA-mainland born	100,246
CHINA-Taiwan born	79,572
JAMAICA	49,162
DOMINICAN REPUBLIC	44,422
HONG KONG	37,127
GUYANA	35,282
PAKISTAN	34,974

Senator **Kennedy**. We now have two panels of immigration experts. The first panel includes witnesses whose expertise is oriented toward labor market issues.

First, we welcome Dr. Vernon Briggs, professor of labor economics at the School of Labor and Industrial Relations at Cornell University.

Second, we welcome David North, director of the Center for Labor and Migration Studies at the new Transcentury Foundation here in Washington. Over the years, he has been very helpful to my staff and to the subcommittee, and has served as a consultant to the Select Commission.

Third, we welcome back Malcolm Lovell, currently distinguished visiting professor of government and business at George Washington University. When he was at the Department of Labor, Mr. Lovell testified before the subcommittee on several occasions.

We are pleased to have you all here.

Senator **Simpson** [presiding]. The chairman will return in a few moments, but if you will go forward. It is good to see all of you. I have had the marvelous opportunity to meet you when I chaired this subcommittee, and you all in your own way, including those on panel III, whether we have agreed or disagreed, have all added tremendous insight to the illegal immigration problem in the United States. Now we are looking at the legal immigration issue and not calling it a "problem". It is not a problem, as I address it; it is an "issue". So I think that is very important that we get that clearly set, at least from my standpoint, that we are not looking at anything that is alarming or oppressive. It is our heritage. My middle name is k-o-o-i—pure Dutch—and we can all jump up and say, "that is me, too." So that's the way that is.

Now, if you could just summarize in approximately 7 or 8 minutes, that would be very appropriate.

Dr. Briggs first, please.

STATEMENT OF A PANEL, INCLUDING: DR. VERNON M. BRIGGS, PROFESSOR OF LABOR ECONOMICS, SCHOOL OF LABOR AND INDUSTRIAL RELATIONS, CORNELL UNIVERSITY; DAVID S. NORTH, DIRECTOR, CENTER FOR LABOR AND MIGRATION STUDIES, NEW TRANSCENTURY FOUNDATION, WASHINGTON, DC; AND MALCOLM LOVELL, DISTINGUISHED VISITING PROFESSOR OF GOVERNMENT AND BUSINESS, GEORGE WASHINGTON UNIVERSITY, WASHINGTON, DC

Dr. **Briggs**. Thank you, Senator.

As a labor economist, I have a little bit different prespective, perhaps, than some of the people have on this issue, and I guess I am here to present that perspective.

Following the enactment of the Immigration Act of 1965, immigration has re-emerged as a substantial influence on the size and composition of the labor force and the population of the United States. In contrast to other nations of the world, we stand alone in our willingness to admit hundreds of thousands of people as immigrants and refugees for permanent settlement as well as to tolerate mass abuse of our immigration system.

In fact, one study recently of contemporary American life concluded that "America's biggest import is people."

Last year, Congress took some tentative action to address the question of illegal immigration. In my view, it is still problematical whether that act will reduce the overall immigration flow to manageable proportions.

Moreover, we still do not know the full labor market effects of the four amnesty programs that are contained under IRCA. Many amnesty recipients will now be free to search for jobs anywhere in the economy, rather than being restricted by their illegal immigration status to certain segments of the labor market. We still do not know how many immediate relatives or other family relatives will come as a result of the amnesty provisions. Both numbers will probably be large.

Thus the labor market in the United States is going to have to make added accommodations for both of these provisions over the next several years no matter what the legal immigration system says.

Hence I am not, I must say from the outset, very enthusiastic about the prospect of admitting many more legal immigrants until the full ramifications of the Immigration Reform Control Act can be reasonably ascertained, that is, the amnesty provisions and whether it really can stop illegal immigration and bring overall immigration to manageable proportions.

But I do think it is a very good time to look at the legal immigration system.

Just a few general comments. It has been my long opinion that the legal immigration system has been the heart of the problem the Nation has had with its overall immigration policy. I have felt the policy has been unaccountable. I have felt it has been unfair, and up until recently it has been unenforceable.

The enforceability issue has at least now been addressed. I still think however, that it is an open question whether or not the law really is enforceable yet.

As to the other two questions, accountability and fairness, in my view both are absent from the current immigration policy. It is in this context that I comment on your two provisions of the two bills put before us.

The issue of accountability centers on why the Nation should have a liberal legal immigration policy when all other nations of the world do not. With the exception of the treatment of refugees, asylees, and immediate family members, it seems to me that the role of immigrants in the labor market, their economic role, that should be the driving force that shapes this Nation's immigration policy at this juncture of our Nation's history. For, regardless what types of immigrants come or who they are, most of them must seek employment to survive.

Indeed, immigration presently accounts for at least one-third of the annual growth in the labor force, and some estimates are even higher. As a consequence, we have a labor force that is growing much faster than that of any other industrial Nation in the world.

Yet today, less than 5 percent of the immigrants and refugees who are legally admitted into the United States are admitted on the basis that the skills and education they possess are actually known to be in demand by U.S. employers. The percentage is considerably less if you make any allowance for illegal immigrants.

To be accountable, the policy should be both quantitatively and qualitatively flexible in its admissions mechanisms. The numbers admitted ought to be easily employed without endangering the job opportunities or working conditions of native-born workers.

Thus, precisely who should be admitted should be determined in my view by the demonstrated needs of the economy. They should fill job shortages.

Under the existing system there is little effort given to make immigration policy accountable for its economic consequences. Instead, it embodies a hodge-podge of dubious political objectives.

Unfortunately, I feel most of the amendments that were proposed in the two bills that we were asked to comment upon perpetuate in many ways these undesirable features.

Although there are some rearrangements of the preference categories in both bills and some changes in treatments of refugees and immediate family members in the Simpson bill, both perpetuate the notion that the Nation should have a continuation of a substantial flow of legal immigrants. And undoubtedly, both of them would lead to an increase in the number of legal immigrants.

There is no real rationale provided in either bill as to why the Nation should continue to admit so many immigrants and refugees. And again, I am not saying we should stop; I am just simply saying why should we be increasing the number.

Under current population projections based on total immigration flow of 1 million persons, which I believe to be a reasonable estimate given the legal immigration system refugees, asylees, and my belief that illegal immigration will probably continue and increase and estimates of the continuation of the low fertility rate of 1.8 children per woman of childbearing age, which I believe is an unreasonable, low estimate, given the higher fertility rates of immigrants, the Nation will have a net population increase of 100 million people by the year 2080. That is, we will reach 340 million people in less than a century.

With this in mind, there simply in no justifiable reason for increasing immigration levels simply for the sake of doing so.

Neither of these bills really addresses the question of flexibility, quantitative flexibility in setting these aggregate numbers. The existing legal mechanisms, fire in the same number of people every year, regardless of what the economic conditions of the economy are—whether unemployment is high, low, falling or rising. To me, that doen't make much sense. The level ought to be tied, at least in the short run, to fluctuations of economic indicators.

Both bills retain family preference categories as the mainstay of the Nation's legal immigration system. And when you add refugees and asylees, it means overwhelmingly that most of those who enter will continue to be admitted without regard to whether they can directly contribute to the Nation's labor market needs.

Both bills retain family preference categories as the mainstay of the Nation's legal immigration system. And when you add refugees and asylees, it means overwhelmingly that most of those who enter will continue to be admitted without regard to whether they can directly contribute to the Nation's labor market needs.

Token changes are provided in both bills, but I think it still retains the fact that both bills continue to pay homage to labor market principles, but they are designed primarily to perpetuate the status quo, that is, the family reunification system.

Now, with respect to an area I do feel more expertise on, that is, the Nation is in the midst of a rapid transformation of its industrial and occupational patterns. Immigration policy should be responsive to these emerging trends. If it cannot be demonstrated that immigrants can provide the types of skills and education needed to fill jobs that are in short supply, then I think most of them should not be admitted.

There can certainly be some exceptions for some family members, hardship cases and certainly in cases of refugees. With regard to refugees, I would say, however, the number of refugees should be tied explicitly to the number for whom the Federal Government is willing to finance in terms of adjusting them to the local labor market, rather than simply dumping them on local communities with limited Federal assistance to try to pick up that responsibility.

Qualitatively, I think the system should be flexible as well. When they do mention the labor market, the proposed bills presume that we will need highly skilled and educated applicants. I think right now that is the case. That is a justifiable conclusion. But let's also understand that that assumption implicitly says that this Nation is incapable of preparing its citizens for these top-line jobs. I pray this is not the case. You simply cannot allow our education and training system to continue to fail to meet the obligations to prepare our own citizen students for these types of high-paying jobs.

Presently, we have no choice, and the immigration policy is greatly helping us right now, especially universities, and the computer industry, to rely on immigrants to fill some of these jobs because of the gross deficiencies in our academic and vocational training programs. But this is a sad state of affairs, and it should not be perpetuated.

Let me also mention that the Department of Labor currently projects that 40 percent of the growth in occupations between now and the year 2000 will be in the executive, administrative, professional and technical occupations.

Unless our education system can meet those needs, the future is bleak for many of our own citizens seeking high-paying and secure jobs.

I would prefer to be optimistic that human resource development will become this Nation's number one priority again in the future, as it is in Japan. If this does happen, I think we should at least be prepared for the fact that the immigration system might be needed to provide less-skilled and semi-skilled workers. Currently I don't see a great deal of flexibility in the system the way it is now set up.

Senator **Simpson**. Dr. Briggs, I have let you go on now about 10 minutes. Could you summarize? I would appreciate that very much.

Dr. **Briggs**. Yes. I would say that in my view, immigration should be recognized as being a major economic policy, which is what it is, and looked at in that case.

I also think as far as fairness is concerned, the family preference system to me is indefensible. The nepotism in the system is indefensible. And just in closing, I will simply say I think the legal system today is inflexible, it is mechanistic, it is discriminatory, it is unaccountable for its economic consequences. And to me, the legal immigration system needs very careful study and not to be simply patched with a few bandaids.

Thank you.

Senator SIMPSON. Thank you for that very important viewpoint. That is very helpful.

[Prepared statement, along with questions and answers, follow:]

Testimony Before the
Subcommittee on Immigration and Refugee Affairs
Committee on the Judiciary
U.S. Senate
Washington, D.C.
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The Reform of the Legal Immigration System of the United States

Vernon M. Briggs, Jr.*

Introduction

The last time that the nation's legal immigration system was independently studied by Congress was in the mid-1960s. Following the enactment of the Immigration Act of 1965 and as a direct result of its provisions, immigration has slowly reemerged again as a substantial influence on the size and composition of the U.S. population and labor force. In contrast to all other advanced industrial nations, the United States stands alone in its willingness to admit each year hundreds of thousands of legal immigrants and refugees for permanent settlement as well as to tolerate mass abuse of its laws by an even larger annual number of illegal immigrants. Indeed, a 1986 study of contemporary American society concluded that "America's biggest import is people".

Last year Congress took some tentative action to address the major problem in the immigration policy area: illegal immigration. It is still problematical, however, whether the passage of the Immigration Reform and Control Act (IRCA) of 1986 will help reduce the overall immigrant flow to manageable numbers. The absence of an effective identification system, concern over inadequate funding for enforcement, and the omission of any attention to the powerful "push" forces (i.e., population growth, poverty, unemployment, human rights violations, and corruption in the countries of origin of the illegal immigrants) all suggest that illegal immigration will probably continue at high and, possibly, increasing levels. Moreover, the full labor market effects of the four amnesty programs created under IRCA cannot yet be estimated. The amnesty recipients will be free to search for jobs anywhere in the economy and will no longer be restricted to only certain sectors. How many of their immediate relatives who will also enter the labor force over the coming years is anybodies guess -- but the numbers should be large. Thus, the labor market of the nation is going to have to make these added accommodations over the next few years to whatever the legal immigration is also doing.

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Hence, I must say that from the outset that I am not very enthusiastic about the prospect of admitting more legal immigrants until the full ramifications and effectiveness of IRCA can be reasonably ascertained. It is, however, a propitious time to review the nature of the legal immigration system itself and I welcome the opportunity to express my views.

The Legal Immigration System: General Comments

It has long been my opinion that the legal immigration system is the heart of the problems that the nation has had with its overall immigration policy. I have felt that the policy has not been accountable, fair, or enforceable. By being accountable, I mean does the design of the policy meet the needs of contemporary society? By being fair, I mean are all persons who can fulfill the stated purpose of the policy given equal chance to qualify? By firm, I mean is the policy capable of carrying out its stated objectives.

Last year the passage of IRCA was designed to address the enforceability issue that had plagued immigration policy up until then. I think it is still an open question whether the weapons and funds Congress has provided are up to the task but there is at least temporary hope in this area.

As for the other two concerns -- accountability and fairness -- both are absent from existing immigration policy. It is in this context, therefore, that I will comment on both the Kennedy and the Simpson bills.

Accountability. The issue of accountability centers on why the nation should have a liberal legal immigration policy when all other nations of the world do not. With the exception of the treatment of refugees, asylees, and immediate family members, it seems to me that it is the role of immigrants in the labor market -- their economic role -- that should be the driving force that shapes our nation's immigration policy at this juncture of the nation's history. For regardless of what causes immigrants to come to the United States, most must seek employment to survive. Indeed, immigration presently accounts for at least one-third of the annual growth in the U.S. labor force -- a labor force that is growing at a rate much faster than that of any of our major industrial competitors. Yet today, less than 5% of the immigrants and refugees who are legally admitted to the United States each year are admitted on the basis that the skills and education they possess are actually known to be in demand by U.S. employers. The percentage is considerably less than 1% if illegal immigrants are included in the total immigrant flow.

To be accountable, the policy should be both quantitatively and qualitatively flexible in its admission mechanisms. The number who are admitted ought to be easily employed without endangering either the job opportunities or working conditions of native born workers. Thus, who precisely should be admitted should be determined by the demonstrated needs of the economy (i.e., they should help fill job shortages).

Under the existing immigration system, there is little effort given to make immigration policy accountable for its economic consequence. Instead it embodies a hodgepodge of dubious political objectives. Unfortunately, I feel that both of the pending bills perpetuate this undesirable feature.

Although there are some rearrangements of the preference categories in both bills and some changes in treatments of refugees and immediate family members in the Simpson bill, both perpetuate the notion that the nation needs to have a continuation of substantial flows of immigrants each year. They both would admit about 550,000 to 650,000 persons a year with visas, or as immediate family members, or as refugees or asylees. If anything, both bills would allow circumstances for even more persons to be admitted. The Simpson bill at least provides for a tentative cap on immigration by forcing a trade-off between more than a "normal flow" of refugees and immediate family members with other family preference admissions unless the President declares a "refugee emergency". It also slightly reduces the definition of immediate family members. I would support the rationales behind both of these changes. The revised Kennedy bill explicitly raises the visa numbers from 270,000 to 350,000 with no changes made in the immediate family definitions and no linkage to refugee and asylee flows. There is no real rationale provided in either bill, however, as to why the nation should continue to admit so many immigrants and refugees. Under current population projections based on a total immigration flow of one million persons a year (a reasonable estimate for the annual number of immigrants, refugees, asylees, and illegal immigrants) and a continuation of the nation's existing low fertility rate of 1.8 children per woman of child bearing age (an unreasonable assumption since fertility rates of immigrants tend to be higher than for natives and the immigrant population is increasing annually), the nation will have a net population increase of 100 million persons by the year 2080 (i.e., the population will be 340 million persons in less than a century). With this in mind, there simply is no reasonable justification for increasing immigration levels simply for the sake of doing so.

Neither bill provides any quantitative flexibility in setting the aggregate number of persons annually seeking permanent settlement in the United States. Given the enormous scale of this annual flow, annual immigration levels should be linked to short run domestic economic circumstances. During periods of high unemployment such as we have had here in the 1980s and continue to have at this moment, the number of admissions should decline on a scale that is directly related to unemployment. The changes in the aggregate numbers of immigrants each year should be borne entirely by the family preference categories. The mechanism to set these annual admission levels should be given to an administrative agency of government to set each year subject only to a ceiling imposed by Congress.

Likewise, both bills retain family preference categories as the mainstay of the nation's legal immigration system. When refugees and asylees are added, it means that overwhelmingly most of those who enter will continue to be admitted without regard to whether they can contribute to the nation's labor market needs. Token changes are provided in both bills that would increase the number of non-family related immigrants -- called "independent immigrants" but the current occupational preferences (the third and sixth preferences) are kept intact in the Kennedy bill at 54,000 while being slightly reduced to 50,000 in the Simpson bill. The Kennedy bill adds a point system to admit 50,000 non-preference immigrants that is geared to productivity factors (i.e., age, education, fluency in English etc.). The Simpson bill does the same for about 35,000 "selected immigrants" who would be admitted only on the basis of productivity factors and who could only apply for these visas abroad. Thus, both bills pay homage to labor market principles, but they are primarily designed to perpetuate the status quo whereby most of those who are admitted are done so on a non-labor market basis. Given the fact that the nation is in the midst of a rapid transformation of its industrial and occupational patterns, immigration policy should primarily be responsive to these emerging trends. If it cannot be demonstrated that immigrants can provide the types of skills needed to fill jobs that are in short supply by citizen applicants, they should not be admitted. The exceptions should only be for immediate family members or for refugees for whom the federal government is willing to bear the full financial cost associated with providing them with skills and education needed to qualify for available jobs. Other family preferences should only be admitted when, as discussed above, the domestic economy is operating at or near a full employment level (3 or 4 percent full employment). In other words, I feel it is time that immigrants should be expected to meet the same test that President John F. Kennedy asked of citizens almost two decades ago -- namely "ask not what America can do for you but what can you do for America."

I would even go so far as to say that those admitted under the occupational preferences or the independent immigrant categories should be admitted on a probationary basis for say 2 years during which time, if they cannot maintain employment in the occupations for which they were admitted, they would not be eligible to adjust their status to become a permanent resident alien and they would be expected to leave. Neither bill addresses this concern.

Also, I feel that the point systems and occupational preferences should also be qualitatively flexible. The presumptions of the proposed bills is that preferences should be given to more highly skilled and educated applicants. Under present circumstances, this is a justifiable conclusion. But it also implicitly says that this nation is incapable of preparing its citizen youths for these top-of the line jobs. I pray this is not the case. We simply cannot allow our nation's education and training systems to continue to fail to meet its obligations to prepare students for these types of high paying jobs. Presently, we have no choice but to seek some immigrants to fill some of these jobs because of the gross deficiencies in our academic and vocational training programs at all levels of instruction. But this is a sad state of affairs that should not be perpetuated. If we can address these chronic educational needs -- the U.S. Department of Labor, after all, projects that 40 percent of the growth in occupations between now and the year 2000 will be in the executive, administrative, professional and technical occupations, the employment future for many native Americans is bleak. I would prefer, however, to be optimistic and hope that human resource development will become the nation's number one domestic priority -- just as it is in Japan. If this does happen, it is conceivable that future labor market shortages will occur in the semi-skilled and less skilled occupations. If so, the one element of human resource policy that could fairly be used to recruit workers for these types of shortages would be immigration policy. If such shortages do not materialize, of course, there should be no immigration of such persons. The point is that immigration policy should also be qualitatively flexible enough to meet whatever compositional changes might occur in the demand for labor in the future. Now the need is for skilled and educated workers; it might not be in the future. There are only minor measures in both bills that would allow the admissions system to adjust to such circumstances.

The only way to bring flexibility to the admission system is to give an administrative agency the authority to annually set both the quantitative level and the qualitative composition of immigrant flows that would both be responsive to changing labor market conditions. The detailed legislation in this area only introduces more rigidities. Immigration policy must be recognized for what it is: a key element of national economic policy. While I welcome the fact that both bills introduce point systems to determine some of those who seek to be admitted, I think that the details and the points should be set by an administrative agency in accordance with demonstrated need. I do not see why the legislation should cement certain categories and certain point values into legislation. It is too hard to change laws. These topics should be subject to regular administrative review which would, of course, have to be defended before Congress. In an ideal world, the agency making the decision would be required to conduct special research studies to back up the categories it uses and the point values it assigns at given times. Under such circumstances, I would say that the principle of using points based on certain immigrant characteristics should be extended to all of the non-family preference categories.

Both bills make the system more legalistic and mechanistic than it currently is. They reflect the fact that, by the accidental quirk of fate, the design of immigration policy was given in 1941 to the Department of Justice and the Judiciary Committees of Congress. The legal community has seized control of what is essentially an economic issue. In the process, they have created a nightmarish system whereby there is essentially no administrative discretion allowed anywhere. Just as the nation did last year with its tax codes, it is now time to simplify the immigration system.

Fairness. Both bills retain family preferences as the essential rationale for the nation's immigration. The revised Kennedy bill even adds 30,000 visas that would be made available for such would-be immigrants. It is not exactly clear whether the Simpson bill will increase or decrease the numbers over existing levels since other groups such as immediate family relatives, refugees, and asylees are lumped together in the 465,000 visas that would be available for family preferences. It seems likely that the total number of family preference visas will go up. Both bills do shift some of the weights assigned to the various preference categories. The Kennedy bill reduces the number of 4th and 5th preference visa numbers and, if I read the Simpson bill correctly, it would phase out both the 4th and 5th preference visas. I would support the direction of both of these changes. Reducing the 4th and 5th preferences is highly desireable; elimination of both would be more preferable. Both of these categories highlight the nepotistic and discriminatory nature of the existing system. In no other realm of national life would such blatant assaults on fairness be tolerated. I see no reason why family preferences should be given any more than token mention -- perhaps for certain hardship cases -- in the immigration law. The maintenance of a system whereby 80 percent of the visa numbers are given sheerly on the basis of having a relative who is a citizen or resident alien is in my view, indefensible in this day and age.

Historically, it is well known that family reunification became the main entry route as the direct result of the efforts of persons who wanted to maintain the obnoxious national origin system during the 1965 overhaul of the legal immigration system. Over the objections of the Johnson Administration which favored labor market consideration as the primary and major rationale for the nation's immigration system, Congress did the reverse: it downplayed labor market considerations and advanced family reunification as the primary rationale. Hence, the principle of family reunification does not have a particularly proud history. In my view, it is as distasteful now as it must have been in 1965 to reformers who wanted a truly non-discriminatory immigration system.

Conclusion

It has long been my firm hope that Congress would turn its attention to the conceptually outmoded and indefensible features of the existing legal immigration system. Unfortunately, I find little in either of these bills about which I can be excited. While I am not fearful of any of the suggested changes, I am disappointed about the loss of opportunity to address a major national problem. Namely: the legal immigration system is inflexible, mechanistic, discriminatory, nepotistic, and unaccountable for its economic consequences. The entire system needs to be overhauled. Both bills propose cosmetic changes around the margins. Fundamental change is what is required.

Responses to Written Questions Submitted
By Senator Alan Simpson to Vernon M. Briggs, Jr.

Question No. 1: What is the justification, today for large-scale immigration to the U.S.? I am not resisting such immigration, merely interested in whether it is essential, and whether it continues to be in the national interest.

Frankly stated, there is absolutely no justification for large-scale immigration to the United States at this particular time in the nation's economic development. Unlike our other industrial competitors in the free world, the labor force of the United States is increasing rapidly -- by about 2 million persons a year. In part, this is due to immigration but it is also due to the increasing overall labor force participation rate of women and the demographic age distribution of the population (i.e., the baby boom generation is now in the prime labor force participation age cohort of between 24 and 44 years of age). The nation does not need more workers in a quantitative sense. Indeed the nation's unemployment rate is at 5.8 percent -- a very high rate for a nation that is supposedly in a period of economic prosperity. Moreover, the unemployment rates for blacks and Hispanics are still in the double digit range. Hispanic poverty is increasing and is rapidly approaching the level of blacks (almost 1 in 3 Hispanics are now living in poverty). Many immigrants are in the same low wage and local labor markets as are concentrations of citizen blacks and Hispanics.

On the other hand, the nation is highly dependent at this time on some flows of immigrants into certain occupations that require high levels of training and education. It is a sorry comment on the state of our nation's educational system that many of the best jobs with the highest pay and the most secure employment future are available to immigrants became citizens are either unqualified or unavailable to fill them. At this particular point in time, the nation does need to allow more persons admitted on the basis of occupational qualifications and not family reunification principles. There is a qualitative rationale for changing the size of the preferential categories.

My point is that the nation's immigration system should be flexible in both the number of persons it admits each year (i.e., it quantitative role) and who it admits (i.e., its qualitative role). The economy of the United States is in the midst of a radical transformation of its occupational, industrial, and geographic employment patterns. Immigration is far too important to continue to function as a wild card that pumps people into the labor market without regard for whether they are needed or what effects they may have on the employment opportunities for citizen workers. The national interest, in my opinion, requires that immigration policy be held accountable for its economic consequences. The present system simply does not do this.

Question No. 2: Do you support or oppose the idea of a lottery, and how might such a system be administered?

Simply stated, I do not support the idea of a lottery to admit persons who do not qualify under other preference categories. Immigrants should be admitted on the basis of what they can do for the country -- i.e., the economy. The idea of a lottery seems to me to be just a sentimental gimmick to allow more people into the United States simply for the sake of doing so. As indicated in my testimony, I do not support the existing immigration system. It gives far too much attention to the admission of family categories and, as a result, it is discriminatory and nepotistic. But the way to rid the system of these negative features is to reduce dramatically the family preferences and to replace those openings with persons who can fill legitimate labor market needs -- regardless of who or where they come from. A lottery only adds more uncertainty with regard to the skills and educational abilities that immigrants bring to the nation's labor market. It also adds more inflexibility with regard to the number of people admitted each year. As indicated earlier, I think the number should fluctuate each year based on the state of the economy.

Question No. 3: What magnitude of change in the numerical allocation of visas between family and independent immigrants would be necessary to achieve the desired balance, assuming that the overall level of legal immigration is not changed?

I would prefer to see the priorities and the preferences revert back to roughly the same as they were from 1952 to 1965 when there were only four preferences and the largest (50% of the total) and first preference was given on the basis education, training, special experiences, and exceptional abilities of the would-be immigrants. That system gave official recognition to the idea that immigration policy could be used as an instrument of human resource policy. The other three admission categories were tied to various categories of relatives.

It is true that the system of that era did not work well but the reason was that the overall immigration system was still tied to the national origins framework. When the national origins system was finally repudiated in 1965, however, the labor market priority system was thrown out too. This latter action, in my opinion, was an awful mistake. It is well known that the priority given to family reunification that was introduced in 1965 was done so largely as a sub rosa method of perpetuating the old national origin system under a new guise. It is time to right this wrong and to return to labor market preference as the overriding justification for our immigration policy. One immediate step in this direction would be the elimination of the fifth preference entirely (a provision that was in the original Simpson-Mazzoli bill of 1982 and which I supported then and now). As the fifth preference accounts for 24 percent of total allotment of immigrant visas, a shift to these visas to the third and sixth preference categories would go a long way toward meeting my goals. I would also sharply reduce the second preference from its current 26 percent of the total.

Simply reducing and eliminating some of the family preferences would not by itself meet my goal of making the system flexible but it would go a long way toward making it accountable for its actions.

Senator SIMPSON. Next in the order of the agenda, David North. I believe I have seen you before, sir.

Mr. NORTH. You have, sir. I always look forward to my annual 7 minutes with Senator Simpson.

Senator SIMPSON. Oh, heck, take 8. [Laughter.]

STATEMENT OF DAVID S. NORTH

Mr. NORTH. I have been looking at immigration policy matters for a number of years. I share some of Professor Briggs' worries and concerns about population.

I am, however, a little more upbeat in my general attitude about these bills and about the process. I think one thing nobody has said should be said, that immigration makes this an interesting country. It makes it better than if nothing but the Anglo-Saxons and the Indians were still here. I welcome that, and I think that that is a qualitative thing that we should not forget.

But let's talk about these bills. While thinking about them, and thinking about the Senators hearing this testimony, I thought about two elite American populations, both selected through public processes, and the extent to which family ties have an impact on those selection processes.

One elite group consists of 100 U.S. Senators. The other consists of the fortunate half-million or so who manage to secure U.S. immigrant visas each year.

Although this would appear to fly in the face of the laws of chance, those of us who pay attention to congressional trivia count six members of the current Senate, including two on this subcommittee——

Senator SIMPSON. Two?

Mr. NORTH [continuing]. Two—who have been preceded to this chamber by blood relatives or in-laws. And there were the Lodges and Longs and the Frelinghuysens in the past.

Now, the current percentage of family connections in the Senate is 6 percent, but this is tiny compared to the percentage of family connections in recent cohorts of immigrants.

I use the percentage of 73 percent. That is fiscal 1986 data, and that excludes refugees, which is really not appropriate, it excludes refugees as family-connected. Most of the people coming out of Southeast Asia are related to relatives in this country already.

But even at 73 percent, that is a large number, a large percentage, and a percentage that I am somewhat worried about. I regard an immigrant visa as a public good. It is created by the government; it cannot be created in any other way.

At least some of these visas should be issued to meet a public need, not just private ones. Thus, I welcome the general thrust of the legislation before this subcommittee, which I think is rather more drastic and rather more progressive than Vernon Briggs seems to think.

What we seem to have here is a bipartisan effort—the details are quite different—but a bipartisan effort to deemphasize family immigration. Mind you, I do not want to end it, but I do feel that the current percentage is excessive.

I have had an opportunity to look at other Nations' immigration systems. Like Alan Nelson, I spent a little time in Canberra. I have also looked at the Australian, Canadian and New Zealand systems. All welcome foreign-born as immigrants, not as guest workers. Many of them bring in proportionately more people than we do. Each of those nations is better positioned, frankly, than we are to attract the restless talent of the world.

Our total lack of ability to issue visas to investors is just another indication of the peculiar state of our immigration admission system.

These are complex bills. In one, there is a three-page long sentence that reads like German. The verb does not come until the very end.

We have time to make only the most basic comments, which follows.

I am pleased that there is so much in common in these bills. Both have narrowed the definition of "family member"; both have dropped the fixation on nieces and nephews. I think if you paid attention to the numbers that the gentleman from the State Department mentioned to you, something like 50 percent of the backlog in fifth preference are nieces and nephews, which in my book are relatively distant relatives for policymaking purposes.

Anyway, both of the bills de-emphasize family preferences, and both of them work on point systems, and that is good.

Just as we cannot seat all the public-spirited types who would like to join the U.S. Senate, we cannot accommodate all of the people in the world who would like to migrate to the United States. I am a little concerned about large increases in numbers. I am also worried about a creep, a continuing increase in numbers. I am perfectly comfortable with the level of immigration at half a million or 600,000 a year. I worry about "open sesame" or even a little bit of "sesame".

I worry a little bit about numbers because I worry about the overcrowding that we see in this country, whether it is in Yellowstone Park on a summer's day or the busy streets of downtown Boston. On the other hand, I do want to continue to have a steady and substantial flow of legal immigrants.

These numbers questions would not be so troublesome if we hadn't just gone through a legalization program, which I think is exactly what we should have done, which may bring in 2 million people—and I hope that at least 2 million come in. But that is something we should bear in mind as we work with numbers.

We also should bear in mind as we work with the legal immigration numbers that the Congress of the United States may be about to allow temporary stays which probably will lead to permanent stays of a number of people from places in Central America.

While I worry about the overall numbers, I also worry about flexibility, and I am not particularly happy, Senator, with placing the refugees ceiling within an overall numerical limit. I am perfectly willing to see relatives compete with relatives, and relatives compete with workers. I am concerned about dramatic refugee problems that may come up in the future and how that would be handled.

Both bills have point systems, which I think is a good thing. My testimony, I might add, has been revised, and if you don't have the version that says "revised," you should not read the next paragraph, because I was critical of Senator Kennedy's concept of the adversely affected nations. That has, as of yesterday, been removed; I am delighted it was removed. I was concerned about that because it seemed to be heading back in a perhaps understandable way towards something like the country-of-origin quota system which Senator Kennedy helped defeat in his first few years in the Congress of the United States. That was a major accomplishment, and I would not like to see that diluted.

One final point about languages. While I do not mind giving some points for English—and I am not going to deal with the new point system, which I barely understand and just heard about over the phone yesterday—while I do not mind giving some points for English, I would be happier if we recognized our Nation's general lack of linguistic abilities, as Senator Simon has noted on several occasions and was quoted in this morning's Post on that point.

Personally, I feel inadequate in this department, having a wife who is fluent in Russian and French, a daughter who is terrific in Mandarin, and a son who is pretty good at Spanish. I have been working with a Hmong refugee who does both the White and Blue dialects of that language, and Lowland Lao, and Thai, and French, and English.

Why not some extra points for extra languages? You don't get any points for two languages; you have to have three. But I think anybody who shows up fluent in three languages should be put at the head of the list and get several more tickets in the lottery.

Finally, I worry a little bit about the relative importance of all of this, at a time when we are still deeply involved in the middle of implementing complex, controversial and expensive legislation signed just a year ago.

Should we use the overburdened resources of the Immigration and Naturalization Service at this time to cope with a completely new system of immigrant selection? Maybe we should do something that democracies do with panache: wait a little bit before we act.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much, David North.

[Prepared statement, along with questions and answers, follow:]

Testimony of

David S. North, Director,
Center for Labor and Migration Studies,
New TransCentury Foundation,
Washington, D.C.,

My name is David North; I am with the New TransCentury Foundation and have worked on immigration policy matters for most of the last twenty years. I am honored to be invited to testify on the legislation before the subcommittee.

While thinking about these bills, and the Senators hearing the testimony, I thought about two elite American populations, both selected through public processes -- and the extent to which family ties may have an impact on those selection processes.

One elite group consists of the 100 Senators. The other consists of the fortunate half million or so who manage to secure U.S. immigrant visas each year.

Although this would appear to fly in the face of the laws of chance, I count six members of the current Senate, including two on the Subcommittee, who have been preceded to this chamber by blood relatives or in-laws. And there were Lodges, Longs and Frelinghuysens in the past.

The current percentage of family-connections in the Senate is 6%, but this is tiny compared to the percentage in recent cohorts of immigrants. It was more than 73% in FY 1986, even if you include all the refugees as non-relatives (which is hardly the case.)

My reason for citing the high percentage of family connections in the immigration business is because I think it is debatable public policy. An immigrant visa is a public good created by a government -- at least some of these visas should be issued to meet a public need, not just private ones. With this basic notion in mind I welcome the general thrust of the legislation before this Subcommittee because, after many years, we are seeing a bi-partisan effort to de-emphasize family immigration. Mind you, I do not want to end it, but do feel that the current percentage is excessive.

I have had an opportunity to examine other nations' immigration systems; I know of no nation roughly comparable to ours that places such an emphasis on family connections. Australia, Canada and New Zealand, for example, all welcome some foreign-born as immigrants (more proportionally than we do), not as guestworkers. Each of these nations is interested in securing talented people and investors, in addition to family members. Each has a system designed to meet these goals -- as we do not now. Each is better positioned, frankly, than we are to attract the restless talent of the world. Our total lack of ability to issue visas to investors is just one indication of the peculiar state of our immigrant admissions system.

These are complex bills before the committee. In one there is a three-page long sentence that reads like German -- the verb does not come until the very end. We have time to make only the most basic comments, which follow:

1. I am pleased that there is so much in common in these bills; both have narrowed the definition of family member; both have dropped the fixation on nieces and nephews (in Fifth Preference), for instance; and both have point systems, which have proved so useful in Canada and Australia.

2. Just as we can not seat all the public-spirited types who would like to join the Senate, we can not accomodate all the people in the world who would like to migrate to the United States. Senator Simpson's bill calls for what his staff calls a soft ceiling of 465,000 a year for immigrants of all kinds, including immediate relatives of citizens. Senator Kennedy's bill does not have an absolute ceiling (which would be a new wrinkle in U.S. immigration policy.) That bill, S.1611, would, I believe, produce something in excess of 600,000 visas for a year like 1986. His bill adds an additional 50,000 to the number of numerically controlled immigrant visas.

I worry about numbers because I worry about overcrowding; whether it is Yellowstone Park on a summer's day, or the busy streets of downtown Boston. I worry about our ability to absorb large number of additional people (whether they are native or foreign-born); and I worry about the competition at the bottom of the economic ladder which always accompanies crowding. On the other hand I want, for reasons of diversity and history, for us to continue to have a substantial flow of legal immigrants.

An additional 50,000 would not, routinely, be much of a concern, but these are not routine times in the immigration business. We have decided, quite appropriately, to extend not one, not two, but five legalization programs, perhaps to 2,000,000 applicants. We are on the verge of deciding to delay the departure -- which usually leads to permanent residence -- of hundreds of thousands of people from El Salvador and Nicaragua. I think it would be appropriate to see how these activities play out before we increase our general, year-after-year ceiling.

3. While I worry about overall numbers, I also worry about flexibility, and am not particularly happy with placing the refugee ceiling within an overall numerical limit, as Senator Simpson proposes. We may, at some point in the future, need larger numbers than those set aside for the normal flow (a sad concept, incidentally.) I am not convinced that the proposed technique for meeting such a challenge is the best approach.

4. Both bills have point systems, which is a good thing, because it relates in part to national needs and does so in a structured way. Until two days ago I was concerned about concept of "adversely effected" nations in S. 1611. Senator Kennedy, you did what a string of Presidents had not been able to do, and you did it as a freshman member of this body. You and

your colleagues in the Congress abolished the ethno-centric country-of-origin quota system. That was a truly historic accomplishment and I worried about diluting it with credits for being from a particular group of nations as the printed version of S.1611 would provide. Giving points for youth, for education, for skills, and for English is to recognize qualities that help immigrants adjust to the United States but these points can be secured by anyone, black, brown, yellow or white. They do not relate to the accident of the land of birth.

I was pleased to hear over the phone that the concept of the "adversely effected" nations had been dropped. I have not worked out a position on the alternative scheme, with its heavy emphasis on the English language, but was relieved by the decision on the other approach.

Two lesser points:

o I am intrigued by the prospect of a lottery for for immigrant visas and look forward to the reaction to this suggestion by my friends in the Visa Office.

o While I do not mind giving some points for English, I would be happier is we recognized our nation's general lack of linguistic abilities. Personally I feel inadequate in this department, having a wife who is fluent in Russian and French, a daughter who is terrific in Mandarin and a son who is pretty good at Spanish. I have been working with a Hmong refugee, who does both the White and Blue dialects of that language, and Lowland Lao, and Thai, and French and English. Why not some extra points for some extra languages?

Finally, I worry a little about the relative importance of all this at a time when we are still deeply in the middle of implementing the complex, controversial and expensive legislation signed just a year ago. Should we use the overburdened resources of the Immigration and Naturalization Service, at this time, to cope with a completely new system of immigrant selection?

Maybe we should do something that democracies do with panache -- wait a little before we act.

Senator SIMPSON. Malcolm Lovell, it is nice to see you, sir, return to the subcommittee panel. I have always appreciated your good observations, which we will have right now.

STATEMENT OF MALCOLM LOVELL

Mr. LOVELL. Thank you very much, Senator. It is always a great pleasure to appear before you and hear your words of wisdom coupled with wit.

Our present legal immigration system has many psychic rewards, but it has produced heavy majorities of immigrants who are family members and refugees rather than recruited gifted aliens for skills and adaptability to the labor market. This has been an important factor in the decline of average skills and education levels of the major immigrant population in the past decade and a half.

The far-reaching changes in the size and composition of our labor force and occupational profile between now and the year 2000 argue for immigration results that are the opposite of those prevailing. We need fewer less-skilled or unskilled, and more highly trained and readily employable persons.

U.S. citizenship is the most coveted in the world. An equal measure of head and heart should be ladled in providing this precious honor to those seeking permanent admission as potential citizens. Our current system is based primarily on heart.

Both bills before us today are partial steps toward a remedy. Both would separate family and independent immigration, recognizing their distinct objectives, and would give somewhat more emphasis to helping fill our needs for immigrants who are trained, skilled and adaptable as workers and prospective citizens.

S. 1611, however, is out of step with labor market needs in retaining a preference category for unskilled workers. Both correctly retain emphasis on reunification of the two-generation nuclear family, but recognize in different degrees that relatives such as parents, adult children and siblings have a lower order of needs for immigration benefits. Both have designed what are by and large realistic practical criteria for measuring the value of prospective independent immigrants rewarding such important labor market advantages as education and knowledge of English. And I certainly would support David North in giving points for other languages as well.

Both bills have the virtue of allowing more flexibility than our present legislation, with regular interagency reviews of conditions and periodic opportunites to adjust intake to changing conditions.

The rapid changes in our society and in the world environment in the last decade make it clear we can no longer afford to update our immigration policy only once every generation.

The reviews proposed in the bills should give greater weight to immigration's effect on our competitive posture, on housing, the environment and public education, however.

Both bills retain some degree of protection for the labor standards and upward mobility of American workers; but imported skilled workers must always be regarded as a supplement and a leavening force and not a substitute for it. The labor certification process helps provide this safeguard.

And I differ from the authors of both bills in my belief that no category of independent immigrants that are coming to work, and for that matter, no category of nonimmigrants coming as temporary workers, should be exempt from labor certification.

Both bills would streamline the labor certification procedure, wisely eliminating the requirement for employer-specific assessments. But I believe the need to give greater opportunities for advancement to women and minorities make it imperative that certification also require a determination that sufficient workers cannot practically be trained in adequate numbers for occupations for which immigrants are sought.

Finally, a major feature of Senator Simpson's bill that deserves support is the overall ceiling it would place on all forms of immigration and normal flows of refugees. A ceiling, like a household budget, would be a healthy disciplining device, an added stimulant to ensure that immigration is geared to valid national needs, and an incentive to better long-range planning and careful calculation of priorities.

Thank you, Senator.

Senator SIMPSON. Thank you very much.

[Prepared statement follows:]

STATEMENT OF MALCOLM LOVELL, JR.,
DIRECTOR,
INSTITUTE FOR LABOR AND MANAGEMENT,
GEORGE WASHINGTON UNIVERSITY

Mr. Chairman and Members of the Sub-Committee:

I am grateful for the opportunity to appear before you to discuss United States legal immigration policies, with particular reference to S. 1611, The Immigration Act of 1987, introduced by Senator Kennedy and, the legal Immigration Reform Act of 1987, introduced by Senator Simpson.

I take this opportunity to commend the perseverance and perceptive leadership shown by both Senator Kennedy and Senator Simpson in recent years in working to update our immigration laws to the changing needs and interests of the United States in the 1980s.

The Immigration Reform Act of October 3, 1965, which remains a keystone of our legal immigration policy, at its adoption was a visionary and high-minded piece of legislation in which the country justly can take pride. It eliminated the last vestiges of racial or ethnic favoritism from our immigration policy and established an equitable system that opened up immigration opportunities to previously disregarded areas of the world, thus enriching our culture by diversifying the flow of newcomers.

But even the most farseeing pieces of legislation may with time require adaptation to accelerating changes in American society and in the world environment.

America's immigration policy seeks to advance three basic and, at times, competing objectives:

-- To reunite citizens and permanent resident aliens here with their close family members from abroad;

-- To offer resettlement opportunities to a fair share of the world's persecuted and displaced;

-- To ensure a steady infusion of creative, productive and adaptable workers and prospective citizens from abroad to help America remain a progressive, enlightened and prosperous society.

The national interest is served when the balance among these three objectives is sensitive to national needs and accepts that there must be overall limits on our intake according to the nation's circumstances.

Immigration and the Future Labor Force

It is fair to ask whether our current system is maintaining the desired balance that is most sensitive to national needs. With commendable zeal we have resettled more than a million refugees here since the mid-1970s. No other nation approaches this record. Because of our extraordinary commitment to reunification of the family, as we have broadly defined it in our legislation, 87% of our non-refugee legal immigration comes through family connections and less than four percent of all our legal immigrants are skills tested. Thus, our emphasis on two objectives of our immigration policy, has resulted in neglect of the equally compelling third objective, the enrichment of America's storehouse of skills.

The predominance of family members and refugees in our legal immigration, whatever its psychic rewards, also entails some costs. There is evidence, presented in the works of such scholars as Dr. Barry Chiswick, Dr. George Borjas and Dr. Leif Jensen, among others, that in the past decade and a half the immigrant population has tended toward higher dependency rates, a greater incidence of poverty, and declining average skill and educational levels.

If this is correct, it is particularly bad news for the United States in light of the changes we can expect in our labor force between now and the year 2000. The overall rate of growth of our labor force is slowing, echoing the end of the baby boom in the 1960s. Women and minorities will account for over 80 percent of the net additions of the labor force from now to the end of the century. One out of every five new workers entering the labor force will be a black or hispanic youth, many of them immigrants or the children of immigrants. These are groups that have suffered higher unemployment rates than white males and have been overrepresented among the lower skill occupations. The slower growth in the number of workers gives our nation a rare opportunity to improve their employment rates and to equip them with the skills they need to advance to better jobs.

Immigrants will account for about 23 percent of the net growth of the labor force between now and 2000. This will be the largest share in the increase in the workforce and population registered ~~by~~ immigrants since the first world war. This has important implications for the choices we make of our future immigrants: 1) If they do not speak English, their integration into the changing work force will be considerably more difficult; 2) given the shifting skills needs of our economy, many immigrants may not possess skills that are in high demand; and 3) immigrants tend to be more concentrated geographically than is the total labor force, complicating the immigrants' search for jobs.

Our occupational profile is changing along with the labor force. Higher skilled occupations such as technicians, service and professional workers, sales workers and executives and managers will grow rapidly. Such occupations as operators, fabricators, laborers, support workers, and farm and household workers, all fields where immigrants have tended to concentrate, will have slow to negative growth. There will be a sharp decline in the share of jobs where less than a high school education is now the prevalent requirement. But the number of jobs requiring at least a year of college will grow. Many American women and minority youth are now overrepresented in low-skill, shrinking occupations. They will face even bleaker prospects if immigration continues to pour low-skill workers into those same fields.

At the same time, immigration policies more attuned to the nation's changing occupational structure can bring us the technicians, scientists, professionals, managers and precision production, craft and repair workers we need to supplement our highly skilled categories if the U.S. is to enter the next century as a fully competitive, technological power. But I stress the supplementary role of skilled immigrant labor. Our foremost aim must be to give the less favored Americans of our domestic labor force the education, training and work experience to advance to those higher skilled occupations.

So our immigration policies must be more finely tuned than in the past if they are to ease and not complicate the impending changes in our labor force and occupational profile. Those policies must discourage the flow of foreign workers into low-skill declining occupations, while meeting the needs for higher skills that cannot be obtained through the education and training of Americans and earlier waves of immigrants.

Common Features in Both Legislative Proposals

Both bills before us evince commendable hard work by their authors and an impressive degree of reflection on the country's immigration experience since 1965 and on the insights of the Select Commission on Immigration and Refugee Policy. It is hardly surprising that both bills contain a number of highly positive features in common which deserve broad support:

-- Both bills would establish separate preference categories for family reunification on one hand and for highly skilled workers on the other, recognizing that the two categories meet two highly distinct needs of American society. Both bills thus broaden the opportunities for the entry of independent or "seed" immigrants, tempering what some critics have seen as a strain of nepotism in our immigration policy. Both bills originally reserved opportunities to immigrate to alien workers with demonstrated needed skills, eliminating the remaining provisions for entry of unskilled workers found in the present sixth preference. But I regret to note that the latest version of S.1611 restores some preference numbers for unskilled workers.

These proposals are a partial but important step toward restoring balance in our immigration policy and making it more responsive to future labor force conditions. I believe there are additional ways of balancing the demands of family reunification with labor force needs that deserve consideration. One such possibility would be to apply a skills and education test to applicants in non-immediate family categories, such as adult children and siblings, and advance the place on the waiting list of those who meet criteria determined to be most useful to the nation.

-- The nation's historic high regard for family reunification is adequately reflected in both bills. Both reaffirm the highest priority to spouses and children of American citizens. But in their allocation of numerical ceiling slots, both bills, correctly in my view, give higher priority than in the past to reuniting the two-generation nuclear family and relatively lower priority to applicants not standing in that relationship to citizens or legal residents.

-- Both bills wisely would increase our flexibility in immigration policymaking -- a need that the rapidly moving events of the last decade have clearly underscored. Senator Kennedy's bill would require an interagency review of the workings of the legislation by the President in cooperation with Congress two years after passage and every five years thereafter, with provision for enactment of changes deemed necessary. Senator Simpson's legislative approach, I believe, provides even greater flexibility. It requires an annual interagency report to the President on the effects of the legislation and a certification by the President to Congress every three years maintaining or adjusting the immigration ceilings the bill establishes. Both bills prescribe that the Attorney General, in cooperation with the Departments of Labor, State and Health and Human Services, prepare the reports on which the President's certification will be based.

Because of the pervasive effects of immigration on the nation's environment, urbanization, and educational systems, I would recommend the Departments of Education, and Housing and Urban Development and the Environmental Protection Agency also be required to participate in regular inter-agency reviews of immigration's effects.

Basic Differences: Immigration Ceilings and Labor Market Tests

At the same time there are some important differences between the two legislative proposals that point up key issues in our overall immigration policies.

For me, the most important of these is an immigration ceiling. It seems prudent to assume that demand for opportunities to immigrate to the United States, or to take refuge here, will remain high and even grow for the rest of this century. Spiraling world population growth, sluggish economies and unrest in major source countries of immigration and the self-nourishing nature of family reunification make this likely.

Legalizations under the Immigration Reform and Control Act reached one million in last November and there is every reason to believe it will approach or exceed two million when the program runs out in May 1988. Permanent resident status and ultimately citizenship for a good many of legalized aliens will further boost demand for family reunification visas in the 1990s. Immigration of immediate relatives not subject to ceiling has shown a steady growth of nearly 8 percent a year since 1975. Under our existing legislation, if this growth continues, annual legal immigration could approach one million by the turn of the century.

S.1611 places explicit limits on family reunification and independent immigrant categories totalling 320,000, but, like existing law, leaves overall growth uncontrolled. Senator Simpson's bill, with what is in effect a global ceiling of 565,000 that embraces refugees and immediate family members of citizens, is an important step toward a discipline that has been lacking in our immigration policy. Senator Simpson's bill avoids excessive rigidity by providing periodic opportunities for upward or downward adjustment of the ceiling by the President in cooperation with Congress. Senator Simpson, I believe, has also responded to a clear need in incorporating that portion of the annual refugee intake that is normal flow -- 50,000 -- into the overall ceiling.

The Legal Immigration Reform Act is a rare acknowledgement that refugee policy must ultimately be related to immigration policy in our overall planning. While the fundamental differences in the circumstances and needs of refugees from those of immigrants has long been recognized, trends of recent years have tended to blur the dividing lines between them. Refugees have most of the same social, demographic and labor market effects as immigrants. In Southeast Asia the original flow in the 1970s of high-risk, politically persecuted refugees has evolved over the years into migrants whose basic motivation, however understandable, is more often economic. The tendency to assign refugee status to entire nationality and ethnic groups as a class, rather than applying the rigorous individual, case-by-case assessments envisaged in refugee conventions and domestic legislation, has further blurred that dividing line. Senator Simpson's bill, however, leaves unrestricted the authority of the President, in consultation with Congress, to set refugee levels as needed annually.

Thus a ceiling -- in the same way as a household budget -- can be an important disciplining device in policymaking, forcing us to determine our priorities thoughtfully and to make our choices consistent with the nation's overall highest interest within agreed limits. Senator Simpson's innovation deserves support.

Both bills maintain as well the current 20,000 per country limit on numerically controlled immigration, but differ significantly in their allocation of it between family and independent categories. Senator Simpson's proposal that no less than one of every three visas awarded in each country go to an independent immigrant is more responsive to priority labor market needs and assures a diversity of sources for family immigrants and independent immigrants.

Balancing Skills Needs and American Workers' Interests

Both bills deserve commendation for the realistic, practical criteria they would apply to recruitment of skilled, productive and adaptable workers and future citizens, adapting what is best of the point systems used by Canada and other western nations. Both work toward a balance between needs of our labor force of tomorrow for additional skills and the expectations of our fellow skilled workers and citizens that their wages and working conditions will receive reasonable protection. Deserving full support is their emphasis on English language ability as an immigration qualification. Nothing helps more than language skills to ease entry into the job market. This provision is in no way discriminatory as English, a world language, can be readily learned by those who would cast their lot with us.

From my own experience as Under Secretary of the U.S. Department of Labor, I am convinced that the labor certification process provided for in 212(a)(14) of the Immigration and Nationality Act remains the best way of guaranteeing this protection and ensuring that skills we import are those most needed and least disruptive to the labor market.

For that reason I would recommend that all independent immigrants in skilled labor categories in both bills be subject to labor certification. Particularly appropriate here is the revised definition of certification proposed in both bills before us which would allow the

Secretary of Labor, in reaching his decision on certification, to use labor market information without reference to the specific job opportunity for which certification is requested. Absent from the proposed labor certification process, however, is any recognition of the need for a chance to train hopeful American workers for positions for which immigrants are sought. The pressing need in coming years for opportunities for women and minorities to improve their status makes this imperative. Accordingly, to the two labor market criteria that the Secretary of Labor must apply I would add a third: a determination that sufficient workers in the United States could not with a reasonable time be trained for such occupations by potential employers.

Finally, I note that Senator Simpson's bill allocates up to 5,000 visas for prospective investors who would commit an investment of at least two million dollars for not less than two years and create jobs for at least ten persons other than spouse and children. Experience shows that this well intended provision, unless carefully monitored, could invite investment designed more for immigration benefit than for long-term economic viability. If this provision remains, I would recommend that the prospective immigrant-investor be required to commit his investment for no less than five years, and that the number of required jobs be raised to 15, exclusive of all family members.

Thank you.

ANSWERS FOR THE RECORD: MALCOLM LOVELL
QUESTIONS OF SENATOR PAUL SIMON

Question #1: Fifth Preference: Under our present immigration law the fifth preference, brothers and sisters of citizens, has become by far the largest category of intending immigrants in waiting lines abroad, now approaching 1.3 million in 1988. Fifth preference applicants from high visa demand countries such as Mexico, Philippines, Hong Kong and the Dominican Republic may expect waits of a decade or longer, and the waiting list is still growing. This prolonged wait in itself has become an incentive to illegal immigration, as some registrants prefer to do their waiting in the United States. Under the present system, with the addition of future petitioners through the present legalization program, fifth preference demand will probably further accelerate. A system that invites immigration expectations for such large numbers, only to make them wait for a decade or more is unrealistic.

I believe that the fifth preference should be phased out entirely, with our acceptance of only those who had been registered five years or more at the time the law is passed. There are many fifth preference registrants that have skills or connections in the United States that would facilitate their immigration as independent immigrants. I would favor giving former fifth preference registrants some preference or extra points toward whatever system is ultimately devised to recruit independent immigrants.

Question #2: Investor Immigrants -- I am cautious on this point because residence in the United States is such a coveted prize in some areas of the world that capital would be mobilized and investment arranged for the purpose primarily of facilitate immigration, and only secondarily for its profitability or for its potential contribution to the sound economic growth of the United States. Investments arranged to gain seventh preference visas before this category became unavailable exhibited this tendency. Unfortunately that capital is likely to come from nations that should be importing capital rather than exporting it -- reverse foreign aid with the U.S. as the beneficiary. Moreover, it has not been shown that in this day and age of instantaneous electronic communications and rapid air travel that it is necessary for prospective investors to be residents of the United States. The non-immigrant categories of our law are flexible enough to allow investors to do business in the United States.

I cannot give a precise estimate as to how many immigrant-investors would enter the United States if my criteria were applied, but it would be considerably less than 5,000 annual ceiling for this category proposed by Senator Simpson.

ANSWERS FOR THE RECORD: MALCOLM LOVELL
QUESTIONS OF SENATOR ALAN SIMPSON

Question #1. Justification for Large Scale Immigration: I see no justification for large scale immigration to the U.S. in purely economic terms. The United States today is not the United States of the turn of century with its enormous appetite for unskilled labor for its expanding industries. Our nation now has a labor force of over 125 million that is still growing. It has an enormous reservoir of skilled labor, and the world's largest network of schools, colleges and other specialized training centers to adapt its prospective workers to the economy's needs. It's hard to see any correlation between heavy immigration and rapid economic growth. Some of the best economic performers of the last two decades, Japan, Korea, Singapore, Hong Kong, registered impressive economic growth rates with little or no immigration and low population growth. The United STates in the coming decade should look for its "immigrants" to the millions of American minority youths and women who must be brought in as full productive members of our labor force.

Question #2. Lottery System: I support in principle the idea of a lottery as long as the criteria for admission to the pool of candidates is carefully drawn, rigorously applied and regularly updated in accord with national skills needs. I also believe that fairness requires that if the fifth preference is terminated those registrants dropped from the waiting list be given extra points in competing for independent immigrant slots, even if they are from countries that exceed their 20,000 annual ceiling.

Screening the several hundred thousands of applicants that could apply yearly for consideration as independent immigrants presents difficult administrative problems, since applying the points test will require more than cursory review of the background and education of each applicant. While computer handling may facilitate the process, one approach might be to have in effect two drawings: the first drawing would take every second, third or fifth application for careful screening; those that show possession of the requisite points would advance to the final drawing. Those who reach the finals, but fail to be selected, would remain eligible for drawing in the lotteries of the two succeeding years. After three years candidates would no longer be considered for independent immigrant slots.

Question #3: Numbers of Independent Immigrant Visas: For years of reasonable economic growth and labor market conditions, the proposed 50,000 visas for independent immigrant categories does not seem excessive. Flexibility, however, is always desirable. The number in any given year should be adjustable to labor market conditions and the flow of skilled and professional labor in the increasingly used non-immigrant categories and in the family reunification category.

Question #4: Unskilled Workers: In my judgment S.1611 has the potential to admit significantly more unskilled workers in the next twenty years than the proposed Legal Immigration Reform Act. Since it provides no ceiling, S.1611 does not address the steady growth of immediate relatives immigration, which will begin to feel the effects in the 1990s of the nearly 2 million undocumented aliens now being legalized. It also retains at least a portion of sixth perference unskilled category, and provides no means to relate prospective refugee flows to overall immigration and to the country's circumstances.

S.1611, by increasing the ceiling from 270,000 to 320,000 adds to downstream momentum for the growth of the uncontrolled immediate family category, many of whom will be unskilled at the time of entry. Adoption of a legal immigration regime that makes no provision for unskilled labor is not likely to mean that we have no unskilled immigrants. Simpson-Rodino now shows some promise of working as intended. But we must expect some low skilled immigrants to continue coming in the future illegally, or through ad hoc arrangements such as extended voluntary departure, special Mariel-type parole arrangements, or special Congressional relief measures.

Senator SIMPSON. I will go forward with some questions. I must leave in just a moment, just for a couple of minutes; I have to return a call to Senator DeConcini, as he is on the floor.

But let me go forward with Dr. Briggs. You state in your testimony that both my proposal and Senator Kennedy's bill allow too large a portion of immigration to be based on family connections. What do you think is the "ideal" level of family connection immigration, and should we submit some of these immigrants to labor market tests before they may immigrate?

Dr. BRIGGS. Well, I don't know that I can specify the exact number, but I think that it is way out of balance right now, and I don't see where the two proposed bills will change very much the emphasis on family unification as the dominant driving force, which makes the human resource skills that we receive accidental.

Now, some of the people have skills that are commensurate with what the labor market needs, no doubt about it. I certainly don't want to be painted as someone who is opposed to immigration. I think immigration is a vital part of the national economic policy, and we should use it as such.

Senator SIMPSON. I speak about an ideal level, you know——

Dr. BRIGGS. I would like to see the system primarily geared to meet labor market needs. Perhaps as high as 90 percent. It was 50 percent from 1952 to 1965. That was the labor preference in the immigration system for those years. And the Johnson administration tried in 1965 to keep it that way. It was changed here in the Congress to give family unification the major preference. I think we all know the history of that shift in emphasis, and it was not a very honorable history. I think it is time to shift that policy back to the way in which I think immigration policy should be.

I would certainly allow some for family unification because there are obviously hardship cases and special circumstances that would come up. But it is too nepotistic to me, and it is too mechanistic, and it just doesn't fit our national needs.

Senator SIMPSON. What are some of the studies that might be necessary for us to determine as to what an ideal level is, not only an "ideal" level—I understand that is so difficult—with family connections, but your concern about the proportionately high levels of immigration. What is that? We don't have a population policy in the United States. That was something that always surprised Father Hesburgh and all of us on the Select Commission; nobody was talking about that in the United States. What is this level? How much is the environment able to encompass and embrace and sustain? Those things never came up. We couldn't find the handle.

Dr. BRIGGS. Well, I don't know if I can answer the population policy question. As a labor economist, I simply say—I think immigration levels should fluctuate inversely with unemployment, and I think we should not be oblivious to the fact that there are prevailing domestic economic circumstances.

I think the annual number will be set politically. But I think that number ought to be a ceiling. And as I say in my testimony, I believe immigration policy ought to be flexible, and given to an administrative agency as it is in Canada and Australia, to figure out what the actual numbers should be every year. And the agency should do the research to find out what that number should be and then fit the categories of which I would hope demonstrated labor market preference would be high.

Senator SIMPSON. Let me go now to David North. There was a very provocative portion you had there with regard to language. I have insisted—well, "insisted," you don't get to do that around here—but I have certainly indicated I think one of our greatest problems in world commerce is the inability of our people to be proficient in Japanese. We like to blame the Japanese for so many problems. One of the deep problems is we just do not have people who know the language, study the language, and here is our greatest trading activity and trading imbalance.

So that means something to me, indeed, and I think we will consider that. But you also say, "Wait a little", and I hear that, you say wait a little before we act on legal immigration changes because of the major changes in the illegal immigration field which we made last year.

What are the likely effects on legal immigration of last year's Reform and Control Act, and what are that law's other significant economic and social effects for which we should await results, perhaps, before we proceed?

Mr. NORTH. I was thinking of delaying in action largely as an administrative matter rather than anything else. I have been watching the Immigration Service and am aware that it is doing two brand new things—enforcing employer sanctions and working through these five legalization programs. And I think for administrative reasons, they don't need another crisis laid on them in the next few months.

That is the principal reason I suggested that there be a delay. You are suggesting another plausible reason for delay which is that we don't quite know what is going to come out of the legalization program. What is clearly going to come out is a number of people will be legally present in the American labor market and the American streets——

Senator SIMPSON. David, I know you will understand; let's just recess for a couple of minutes so I can take this call, and don't go any further. We will resume in just a couple of minutes.

Mr. NORTH. Certainly.

[Pause.]

Senator SIMPSON. The hearing will come to order, please.

You remember EVD for El Salvadorans?

Mr. NORTH. Yes.

Senator SIMPSON. So do I. An interesting issue in itself, you would all agree, I am sure, indeed.

Well, you were in mid-sentence, David, talking about this issue of limits and whether we are moving too fast. If you could go ahead with that.

Mr. NORTH. I think the other reason for delay—and I know it is probably not a very good idea to advocate that the United States Senate delay, but nevertheless—the other reason for delay is that it might be helpful to see what happens with the bill that you just mentioned, the EVD legislation, and to see what comes out of the legalization program.

As I said, I am enthusiastically in favor of our having a legalization program, but it might be interesting to find out what those numbers produce—we will know by May the number of applicants—before we make permanent changes in the system for admitting legal immigrants in the future.

Senator SIMPSON. All right. Malcom, you noted in your testimony that, "Refugee policy must ultimately be related to immigration policy in our overall planning." That was a quote.

Mr. LOVELL. Yes.

Senator SIMPSON. Could you elaborate on that a bit, please?

Mr. LOVELL. Well, it seems to me that we do need a national policy that makes some judgments as to the number of immigrants that we bring in each year. And that should take into consideration refugees, the labor market needs of the Nation, the population growth forecast, as well as some view of the political situation in the world which would cause refugees.

But I think as you indicated earlier, we really don't as a Nation take a look at what the national needs are for immigration, and I think that some process needs to be undertaken in which such a policy is followed.

I also would like to say, Senator, if I may, that I don't think you are going too fast in this. To say that a Federal bureau would have difficulty in processing this, I think perhaps misunderstands the purpose of Federal bureaus. They are to serve the society, and our public policy should not be geared to fit in their budgetary considerations at the time.

The question that you are addressing here of better balance between meeting the long-term economic and social needs of the Nation and the humanitarian needs is, I think, too important to delay unnecessarily. It is difficult enough to get done in a timely fashion, but purposeful delay, I think, would serve no purpose.

Senator SIMPSON. In your testimony, you endorse granting of points to immigrants who can demonstrate English language ability. What is the value of also recognizing education, labor market skills, age, and those things?

Mr. LOVELL. I think they are all very important. The data we have in terms of the changing labor markets indicate that the average job is going to require by the year 2000 at least another year of education beyond which today's jobs require. So education, skills, knowledge of languages, all of these are qualities that we should take a look at. And I have no magic formula as to how the points should be distributed, but these obviously are useful and important qualities for us to be looking for over the next decade or so.

Senator SIMPSON. That issue of refugees under the cap was something we debated the first go-around. I remember an interesting discussion about it then, and so many new aspects of it now: one has testified today about the definition of "refugee" in Southeast Asia, and how many of them really are tied to family reunification. And if you really got down to a dissection, you would find a great number of those who are coming under the title "refugee" who really should be coming under family reunification procedures. But they don't use that procedure. I have some deep personal thoughts about why that is. I think there is a bureaucracy that wants to "hit the ceiling," and it almost makes me want to hit the ceiling when they are trying to hit the ceiling. I think that is wrong, and yet that is what they are doing, especially with the Hmong population right now. That is not what we had in mind, in my mind, and it doesn't have anything to do with the Hmongs or racism or anything else. It has to do with the reality of what is happening in Southeast Asia.

If we are the only country on Earth that recognizes that that program is over over there, then we are going to distort our refugee policies in the future. That is what we are going to do—that is my view.

But anyway, it is a tough issue, and we want to do it in a fair way, but if we can keep in perspective that under the Refugee Act that Senator Kennedy was instrumental in, we have all the procedures we need to take care of real refugees on an emergency basis. We needn't talk about numbers and this and that. Those numbers will be there. This Congress will assure that that will occur. That is what is built into that law.

So I think as we talk about "capping refugees" and "normal flow" and those things, which were very real, that we should remember that we have all the power and the compassion to open that door at any time to "real refugees", those who meet the real test under the U.N. and the U.S. definition of a refugee.

Well, just one final thing. I think it is of interest now that here are Senator Kennedy and I working toward something, and we obviously have our differences and always have, but we do our work with civility. There are things moving in the House on this—or will be. Chuck Schumer has taken an interest in legal immigration. He discusses a class of immigrants called "classic" immigrants, and we have not. Those are people who have no particular skills or trades, who are not recognized under the point system, but who merely have the "drive and desire" to become Americans the way that all of our ancestors did.

Now, let me ask you this. Some have expressed an interest in admitting that class of immigrants, "classic" immigrants—"seed" immigrants is what Father Hesburgh referred to, and maybe they are not quite the same definition—but those would be in addition to those chosen by the point system, and they would be selected on this highly laudatory ground of "desiring to become Americans."

Now, perhaps that could be done by a lottery system, or a method similar to last year's NP-5 program created by the immigration bill.

If you could just quickly, and then we will go to the next panel, what are the merits of such a suggestion and how might it be administered?

Mr. **Lovell**. Let me comment on that if I might, Senator. Sometimes we have a view of the world the way we would think it to be, and I think you find in most nations of the world degrees of education that are much higher than they were 50 years ago. Secondly, I think if you have this sort of "seed" concept, it is very difficult to define and would be very difficult to identify people falling in that category.

My guess is that if you stick with education and skills, the fact that they want to come here provides a certain amount of motivation. I think that in itself, to wrench oneself away from one's home and country and friends of itself I think indicates a desire.

So I guess I would look with some skepticism on a category of that kind.

Senator Simpson. Dr. Briggs.

Dr. Briggs. I would, too. I mean, I am certain there are people like that, but I still think that the only really impartial test should be the labor market needs of the country. That should be the driving force, because immigration policy is primarily economic policy right now. It is just not discussed as such and is apparently not recognized as such. It is still talked about as largely a political process, and I see this as sort of a romantic type of notion, but it is not a hard-nosed economic policy. I think this country has got some really tough labor market problems, and immigration policy is too important to be left alone and to be oblivious to what its impacts are.

Senator Simpson. David.

Mr. North. I am going to be criticized for this, but I think it would be a bitch to administer.

Mr. Lovell. I agree with that.

Senator Simpson. You just keep wishy-washying around. [Laughter.]

I am sure it would, but I also know that Chuck Schumer is a man of remarkable perseverance in this area, and if he is a player in the House, and he is, that indeed we will proceed. And I think with Peter Rodino and Congressman Mazzoli, and our new ranking member over there, Pat Swindall, and Ham Fish and the usual group, that they are working on their package over there.

So that is very helpful, and I appreciate that, and I want to thank you particularly for studying these proposals on short notice. You really were more than kind to do that in only a week or so. David, I believe you were in Texas last week doing research; I know our witness coming up, Michael Teitelbaum, was in Mexico with the new International Migration Commission, and we are all interested in that. And I appreciate the effort that all of you have made.

I have some further questions to enter, and Senator Kennedy has certain questions for the record. So we will go on now to the next panel. Thank you very much. It was very helpful.

You will have 7 minutes next year, David—maybe 9. Anyway, thank you, all of you, very, very much.

Senator Simpson. Our final panel brings a great deal of expertise on the legal immigration issues before us and have counseled this subcommittee so many times over the years, before I came here and since.

We want to welcome Dr. Michael Teitelbaum of the Alfred P. Sloan Foundation in New York. He has appeared here often and is now serving as one of the commissioners of the new Commission on International Migration and Cooperative Economic Development, established under the new immigration law. He has just returned from the Commission's visit to Mexico.

Second, we very much welcome Austin Fragomen, chairman of the board of directors of the American Council on International Personnel in New York, who has followed immigration issues since his service with the House subcommittee many years ago. I always appreciate his wisdom and his current views on issues before us.

And third, Dr. Charles Keely, the Donald Herzberg professor of international migration. I know Donald Herzberg well; I met him in 1970. You carry on under a fine name of that Chair at Georgetown, and a long-time student of immigration issues.

We welcome the whole panel and look forward to your testimony.

Michael Teitelbaum, just tell me quickly, was it a productive meeting with the Commission members down there?

Mr. TEITELBAUM. Much more productive than we had reason to expect, Senator.

Senator SIMPSON. Were most of the members there?

Mr. TEITELBAUM. There were 9 of 12.

Senator SIMPSON. Good.

Mr. TEITELBAUM. It was very tiring, however.

Senator SIMPSON. Was Tim Healy there?

Mr. TEITELBAUM. No, he was not.

Senator SIMPSON. Well, good. Please proceed.

STATEMENT OF A PANEL INCLUDING: DR. MICHAEL S. TEITELBAUM, ALFRED P. SLOAN FOUNDATION, NEW YORK, NY; AUSTIN T. FRAGOMEN, JR., FRAGOMEN, DEL RAY & BERNSEN, AND CHAIRMAN, BOARD OF DIRECTORS, AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL. INC., NEW YORK, NY; AND DR. CHARLES B. KEELY, HERZBERG PROFESSOR OF INTERNATIONAL MIGRATION, GEORGETOWN UNIVERSITY, WASHINGTON, DC

Mr. TEITELBAUM. Mr. Chairman, members of the committee, ladies and gentlemen, it is a pleasure for me to appear before you. I have only initial comments to make on the proposals under discussion here, because as Senator Simpson said, I was out of the country when the decision was made to hold this hearing, and in fact the U.S. Postal Service disgorged Senator Simpson's draft bill only on Wednesday. I ended up drafting my draft remarks between 2:30 and 5:30 a.m. yesterday morning. My children think I am stark, raving mad, and I have to admit that they may be right.

For this reason, I cannot responsibly offer detailed comments on the draft legislation. I want to talk in general about what I perceive to be the general pattern of American immigration policy since World War II, which I think have followed a perverse Law of the Unintended Consequence.

New measures are adopted to recitify perceived problems. These measures lead to unanticipated new problems that surprise the reform's own authors.

Then, in the politics of the special interests that prevail and have prevailed over the past several decades, these unanticipated consequences, never intended by anyone, are often perpetuated by political pressures from those who accidentally benefit from them.

My written remarks have a number of examples. I will summarize very quickly with only a couple.

First, the obvious Bracero program example which, as all of you know, was adopted as an emergency measure in World War II to provide needed labor during the war. When the war ended 3 years later, employers who had become dependent upon Bracero labor lobbied for its retention. And it was not until almost 20 years after the war was over that this provision was eliminated.

The 1965 immigration reforms are another example. These did away with the blatantly racist national origins quota system of 1952 and earlier, but also shifted visa preferences toward family reunification. There were some reasons for that which I won't go into, but the unexpected effect—and I think it was clearly an unexpected effect—of the 1965 reforms was what Chairman Kennedy has described in his introductory comments to his bill as "discriminatory". The present system discriminates against would-be immigrants from Europe and from Africa, and it discriminates in favor of immigrants from Asia and Latin America. These discriminatory effects were quite unintentional, as Senator Kennedy correctly notes.

You already have heard discussion of the fact that 85 percent of legal immigrants now coming from Latin America and Asia and only 15 percent admitted from the rest of the world, including Western Europe, Eastern Europe, and Canada.

A few other notes of interest. Under the present system, there are nearly as many legal immigrants from Mexico, with a population of 81 million, as from the whole of Western Europe, with a population five times larger at about 380 million; and that does not include any of the illegal or legalized illegal immigrants that we know about.

For the Philippines last year, 53,000 legal immigrants. Compare that to the whole of Europe at 69,000 or 70,000. There were seven times as many legal immigrants from Haiti as from Ireland; three times as many from Jamaica as from Italy; and more from Ecuador than from Greece. My guess is that nobody in 1965 anticipated such effects, nor intended them.

Another example of the Law of Unanticipated Consequences is the asylum provision of the 1980 Refugee Act. My understanding is that this was inserted as something of an afterthought. The bill sponsors never expected this to become a large category of demand.

And finally, I assume, though I do not know, that those in the Congress who in 1986 supported the 10,000 special visas known as the NP-5 Program, for nationals of countries disadvantaged by the 1965 reforms, did not anticipate what subsequently happened in January of 1987—the filing of well over 1 million visa applications, from an unknown number of individuals—there may be many multiples in there—for these 10,000 visas.

The reason for our failure to anticipate such effects is not stupidity. The difficulty is that immigration flows and potential flows have become so large, and the economic and political incentives for such migration so powerful that it really is very difficult for ordinary mortals to comprehend the quantitative ramifications of what may appear to be minor legal shifts.

In a way, immigration policy has become a little like tax policy. Minor provisions or exemptions, put in at the insistence of special interests and seemingly unexceptionable, can generate unexpectedly large revenue gains or losses; can produce unintended incentives; can create gaping loopholes, all of which over time can lead to outcomes wholly unanticipated by their framers.

And there is another similarity between tax and immigration—both have large numbers of special interest lobbyists, and both have an active and prosperous group of practicing attorneys.

The need, therefore, is for a more cautious and scientific approach than I believe has heretofore been employed in assessing the possible alternative implications of proposed changes in immigration law.

In other words, if we put aside the political pressures from ethnic groups—in the Southwest or in Massachusetts or elsewhere—from employers, from foreign governments, it should be possible to consider in a simulation format the possible outcomes of alternative changes in the immigration system.

It might allow us to explore questions such as the following: If we were to expand category "x", how might that affect the incentives for shifts among the applicant pool or for the generation of wholly new applicants? If we constrain the overall numbers of immigrants under a given preference or point system, how might the categories interact to produce what overall mix of immigrants, refugees, et cetera?

If we construct a new visa category, such as the independent category in these two bills, what numerical interactions might this have with other existing categories; for example, increases to immediate family migration, decreases in backlog preference categories, and so on?

If we legalize this group or that group of illegal aliens, how might that impact upon the preference system and the national composition of immigration 5 to 10 years down the road?

I confess, members of the committee, that I am not smart enough to do these kind of complex interactive simulations in my head, and I would submit that on the basis of past experience, the same applies to various proponents of past immigration reforms.

So as a practical suggestion, I would suggest to both Senators Kennedy and Simpson that they submit their proposals to a serious simulation analysis implemented by competent and impartial analysts—one could think of various locations for them—the Census Bureau, GAO, INS, elsewhere outside of the Government—so that they might have themselves a better empirical feel for the possible effects of their proposals.

Let me close with a few suggested rules of the road, guideposts, if you will, for selecting among alternative proposals for immigration reform.

First, consider immigration policy as a component of national policy, not as an isolated policy controlled by special employer, ethnic or regional interests. I think it is fair to say that already one Presidency has paid a heavy political price for failing to do so, and I expect similar experiences will occur for others who play this special interest game.

Second, be even-handed. Do not discriminate by nationality, race, religion, politics. Do not discriminate openly, as did the national origins quota system, and do not discriminate clandestinely with preference schemes carefully tailored to discriminate in favor of one or another group.

Third, if you believe that the current system is unintentionally discriminatory, as I do and I believe Senator Kennedy and Senator

Simpson do, do not attempt to correct such defects with a policy designed to discriminate in the opposing direction. Instead, repeal or modify those features that have resulted in the original but unintended discrimination.

Fourth, if immigration policy is to serve the national interest, try to minimize the visa perferences for characteristics of would-be immigrants that set at birth and are not subject to change, such as their nationality, their race, their family relationship, and try to maximize the preferences given for attributes which the would-be immigrant can acquire from personal effort, hard work, study, or whatever, such as education, languages, occupational skills.

You have already heard that as it operates, the current law gives very heavy weight to characteristics set at birth, though I believe unintentionally so.

Fifth, recognize that the demand for immigrant visas to the United States far exceeds any politically conceivable supply. As in all cases of scarcity, hard choices will have to be made, trade-offs will have to be adopted between very worthy categories such as refugees, family members, independent immigrants, and so on.

Sixth, recognize that under the conditions just described, the creation of new categories of immigration visas may well create its own demand, and demand of a magnitude that, again, may well surprise the authors of the new category.

Let me just refer again to the case of the NP-5 visas as an embarrassing example, and a sobering one.

Seventh, do not construct an immigration policy that provides powerful incentives for the disruption of existing families, and then add on provisions to allow these same families to reunify. Such a policy creates the very family disruption that it then seeks to rectify and amounts, unintentionally again, to a policy for stimulating whole-family migration.

Eighth, be brave enough to acknowledge the reality that the United States and the rest of the world, too, are different in 1987 than they were in 1965 or in 1935 or in 1924. The old dogmas and shibboleths and myths of immigration policy no longer apply.

Ninth, do not increase or decrease current immigration numbers to accommodate new categories, while avoiding the political problems that loom in constraining growth in older categories. As mentioned earlier, trade-offs must be made. As to overall numbers, there is no legitimate basis I know of for arguing that the current U.S. admission of some 600,000 legal immigrants per year is too low.

And tenth and finally, do not freeze immigration policy into the traditional 30-year reform cycle. The current world is too turbulent; the political, demographic and economic change rates are too rapid for this kind of time horizon. Both bills, as I read them, incorporate sunset or periodic review features, and this general idea is an excellent one.

I thank you for your attention.

Senator KENNEDY. Thank you very much. That was very interesting and helpful testimony.

[Prepared statement, along with questions and answers, follow:]

TESTIMONY BEFORE THE SENATE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS

December 11, 1987

Michael S. Teitelbaum
Alfred P. Sloan Foundation, New York

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, LADIES AND GENTLEMEN:

It is a pleasure for me to appear before you, at your request and in my personal capacity, to present initial comments on the reform proposals prepared by Senator Kennedy and Senator Simpson. I say "initial" because I have had only a few days in which to consider the implications of what may prove to be very complex effects of these proposals. As you will see from what follows, the evidence from past experience is that the effects of such measures are very difficult to anticipate, and I therefore wish to propose a more concerted effort of anticipation than could possibly have been undertaken in the time available to me. For this reason, I should like to reserve the opportunity to revise my comments upon more deliberate consideration.

It is sad, but quite true, that American immigration policies since World War II have seemed to follow a perverse "Law of the Unintended Consequence". New measures are adopted to rectify perceived problems, measures that lead to unanticipated new problems that surprise and confound the reform's own authors. Then, in the special interest politics prevailing over the past several decades, such unintended consequences are perpetuated by political pressures from those who benefit from them.

A few examples should suffice:

1. The bracero program was adopted during World War II to provide needed labor during the wartime emergency. Yet when the war ended three years later, employers who had become dependent upon bracero labor lobbied for its retention, while Texas agricultural interests sought to legalize their longterm practice of employing so-called "wet" labor from Mexico, an effort that culminated in the adoption of the notorious Texas Proviso in 1952. For nearly 20 years after the end of WWII, the bracero program was sustained by the lobbying of special employer interest groups. When it finally was ended in 1964, the same type of migration was continued under the auspices of the Texas Proviso, which itself was expunged only with great political anguish and the adoption of yet another temporary worker program for the growers, as part of the 1986 immigration reform bill.

2. The 1965 immigration reforms not only did away with the explicitly racist national origins quota system of 1952 and earlier, but also shifted visa preferences toward "family reunification". One less-than-explicit intention of many of the proponents of the "family reunification" provisions was to increase the visas available to immigrants from traditional countries of origin such as Ireland and Italy. But the unexpected effect of the two reforms combined was the present system which Chairman Kennedy describes as discriminatory: it discriminates against would-be immigrants from Europe and Africa, and discriminates in favor of immigrants from Asia and Latin America. These discriminatory effects were quite unintended, as Senator Kennedy correctly notes in his statement introducing his bill.

Under the current system, 85% of legal immigrants now come from Latin America, Asia and Africa; only 15% are admitted from the rest of the world including Western Europe, Eastern Europe, and Canada.

Under this system, there are nearly as many legal immigrants from Mexico (population 81 million) than from the whole of Western Europe, with a population five times as large (ca. 380 million). [Note that the immigration numbers from Mexico do not include any illegal immigrants or illegal immigrants legalized under the Simpson-Rodino bill.]

The same can be said for the Phillippines --- over 53,000 legal immigrants in 1986, compared with 69,526 from the whole of Europe.

There were nearly seven times as many legal immigrants from Haiti (12,666) as from Ireland (1,839); six times as many from Jamaica (19,595) as from Italy (3,089); many more from Ecuador than from Greece. And so on.

3. The unlimited admission of immediate family members of U.S. citizens was intended to rectify problems of family separation in a limited number of cases. But it became, unintentionally, an unlimited entitlement provision, and now accounts for some 37 percent of all legal admissions.

The numbers in this numerically-exempt category have been rising briskly. In 1976 there were about 100,000, in 1985 nearly 205,000, i.e. a doubling in less than 10 years. The latest data I have, for 1986, show a continuing increase rate of over 9 percent per annum in this unlimited category.

5. Overall, family reunification (both the immediate and extended family forms) have come to swamp the other categories of legal immigration: in 1986, nearly 3/4 (72.1 percent) of legal immigrants were admitted under the immediate and extended family categories. Only 17 percent were categorized as refugees, many of whom were admitted for reasons of family ties. Remarkably, less than 9 percent were admitted on the basis of education or skills needed by the American economy.

6. I understand that the asylum provisions of the 1980 Refugee Act were inserted as something of an afterthought, and the bill's sponsors never expected this to become a large category of demand. It would be fair to say that in the seven years since 1980 the numbers of asylum claims have grown well beyond the outer limits contemplated by the authors of the 1980 reforms.

7. I assume that those in the Congress who in 1986 supported the 10,000 special visas (the so-called NP-5 visas) for nationals of countries disadvantaged by the 1965 reforms did not anticipate what happened in January 1987: the filing of well over 1,000,000 visa applications for these 10,000 visas.

8. I do not wish to suggest that this Law of the Unintended Consequence applies only to immigration policies adopted by the United States.

The West German government certainly did not intend to have a large-scale permanent immigration when it opted for its "guest worker" program. But that is what it got, though it still denies, against the facts, that Germany is a country of immigration.

The governments of France, Belgium and other West European countries did not intend to stimulate a powerful right-wing political movement when they adopted their immigration and refugee policies. Yet such movements, some verging on the neo-fascist, have appeared throughout Europe, and are causing much vexation.

In adopting its attractively humanitarian policy regarding political asylum, the Canadian government did not intend to encourage Tamils and Sikhs resident in Western Europe to pay unscrupulous freighter captains thousands of dollars per head to drop them off in lifeboats off the Canadian coast. Yet that is what happened, leading to a political firestorm of anti-immigrant reaction in Canada and an emergency session of the Parliament this past October.

The governments of Kuwait and other Arab labor-importing states of the Persian Gulf never intended their migrant labor policies to generate large permanent immigrant populations. And yet the citizens of such states now find themselves to be minorities in their own countries, a fact of major political significance in this strategic and turbulent region.

The reasons for our failure to anticipate such effects is not stupidity. The difficulty is that immigration flows and potential flows have become so large, the economic and political incentives for such migration so powerful, that it is very difficult for ordinary mortals to comprehend the quantitative ramifications of what may appear to be minor legal shifts. In a way, immigration policy has become a little like tax policy: minor provisions or exemptions can produce unexpectedly large revenue (or migration) shifts, generate unintended incentives, create gaping loopholes, all of which over time can lead to outcomes wholly unanticipated by their framers. (Another similarity: both tax and immigration areas are characterized by active special-interest lobbies, and by lucrative --- and, in a minority of cases, unscrupulous --- law practices.)

The need, therefore, is for a more cautious and scientific approach than has heretofore been employed in assessing the possible alternative implications of proposed changes in immigration law. In other words, if we put aside the political pressures from particular ethnic groups, employers, and foreign governments, it should be possible to consider in a simulation format the possible outcomes of alternative changes in the immigration system. Such approach might allow us to explore questions such as the following:

- If we expand category X, how might that affect the incentives for shifts among the applicant pool, or for the generation of wholly new applicants?

- If we constrain the overall numbers of immigrants under a given preference or point system, how might the categories interact to produce what overall mix of immigrants, refugees, etc.?

- If we construct a new visa category, what numerical interactions might it have with other existing categories, e.g. increases to immediate family migration, decreases in backlogged preference categories, etc.?

- If we legalize this group or that group of illegal aliens, how might that impact upon the preference system and the national composition of immigration 5 or 10 years down the road?

I confess that I am not smart enough to do such complex interactive simulations in my head, and on the basis of past experience I would suggest that the same applies to various proponents of past immigration reforms. As a practical suggestion, I would suggest to both Senators Kennedy and Simpson that they submit their proposals to such simulation analysis by competent and impartial analysts at the GAO, INS, Census or similar agencies, so that they might have a better empirical feel for the possible effects of their proposals.

Finally, may I offer for your consideration a few suggested rules of the road, guideposts if you will for selecting among alternative approaches to immigration reform.

First, consider immigration policy as a component of national policy, not as an isolated policy controlled by special employer, ethnic, or regional interests. Already one national administration has paid a heavy political price for failing to do so, and I expect similar experiences will occur for others who play this special interest game.

Second, be evenhanded. Do not discriminate by nationality, race, religion, politics. Do not discriminate openly, as did the National Origins Quota system that was finally eliminated by the 1965 reforms, and do not discriminate clandestinely with preference schemes carefully tailored to discriminate in favor of one or another group.

Third, if you believe that the current system is discriminatory in practice if not in intention, do not attempt to correct such defects with a policy designed to discriminate in the opposing direction. Instead, repeal or modify the features that result in the original discrimination.

Fourth, if immigration policy is to serve the national interest, try to minimize the visa preferences for characteristics of would-be immigrants that are set at birth and not subject to change (attributes such as nationality, race, or family relationship), and maximize the preferences given for attributes which the would-be immigrant can acquire from personal effort, hard work, study, etc. (such as education, languages, occupational skills). As it operates, the current law gives very heavy weight to characteristics set at birth, though unintentionally so.

Fifth, recognize that under the conditions just described, the creation of new categories of immigration visas may well create its own demand, and demand of a magnitude that may well surprise the authors of the new visa category. The case of the 10,000 special "NP-5" visas last year generating over 1,000,000 applications is but one sobering-and embarrassing example.

Sixth, do not construct an immigration policy that provides powerful incentives for the disruption of families, and then add on provisions to allow these same families to "reunify". Such a policy creates the very family disruption that it then seeks to rectify, and amounts --- unintentionally again --- to a policy for stimulating whole-family migration.

Seventh, be brave enough to acknowledge the reality that the United States, and the rest of the world too, are different in 1987 than they were in 1965, in 1935, in 1924. As in many other areas of public policy, the old dogmas and myths of immigration policy simply no longer apply.

Eighth, recognize that the demand for immigrant visas to the United States far exceeds any conceivable supply. As in all cases of scarcity, hard choices will have to be made, tradeoffs will have to be adopted between worthy categories such as refugees, family members, independent immigrants, etc. (In this regard, recognize that many are admitted as "refugees" who more properly should be counted as immigrants under the family reunification provisions.) It is most unwise to increase current immigration numbers, so as to accommodate new categories while avoiding the political problems of constraining rapid growth in older categories. As to overall numbers, there is no legitimate basis I know of for arguing that the current United States admission of some 600,000 legal immigrants per year is too low. (Those who are blithely asserting that there is a "labor shortage" coming should understand that noone knows -- noone can know --- what will be the labor force needs of the U.S. a decade or more from now.)

Ninth, do not freeze immigration policy into the traditional 30-year reform cycle. The current world is too turbulent, and political, demographic and economic change is too rapid for this kind of time horizon. Both bills incorporate sunset or periodic review features, and the general idea is an excellent one.

THANK YOU FOR YOUR KIND ATTENTION.

RESPONSES TO QUESTIONS FOR THE RECORD FROM SENATOR SIMPSON

Michael S. Teitelbaum

1. WHAT INFORMATION MUST CONGRESS HAVE, AT A MINIMUM, IF IT IS TO MAKE A DECISION ON WHETHER AN EXECUTIVE BRANCH PROPOSAL FOR RAISING OR LOWERING THE IMMIGRATION CEILING IS ACCEPTABLE?

The following information seems relevant to an assessment as to whether overall immigration numbers should be increased or decreased:

- unemployment rates among U.S. citizens and resident aliens, especially those most similar to (and hence most in competition with) immigrants in terms of age, sex, race/ethnicity, education, geographical location, job skills, etc.;

- demonstrated evidence of shortages in certain job skills in the domestic workforce, skills that can be provided by immigrants under a sensible preference system (the word "demonstrated" needs emphasis --- many alleged shortages seem to be related more to the poor pay and working conditions offered than to actual unavailability of skilled domestic workers);

- marginal costs of providing services to likely immigrants, e.g. availability of excess school places (as in New York City in the 1970s) vs. shortages (as in Los Angeles or in Texas border towns in the 1980s), and the fiscal capacity of relevant local areas to provide such services;

- rates of demographic change in resident population;

- public opinion about immigrants and refugees, both nationally and in regions to which the bulk of immigrants are likely to go;

- opinions of state and local political leadership in areas to which bulk of immigrants are likely to move.

2. DOES THE IMMIGRATION SERVICE PRESENTLY POSSESS INFORMATION ON LEGAL IMMIGRATION THAT IT DOES NOT TABULATE OR PUBLISH, BUT THAT IT MIGHT PRODUCE WITHOUT SIGNIFICANT ADDITIONAL EFFORT OR EXPENSE? IF SO, WHAT ARE SOME EXAMPLES?

I have no informed opinion on this subject. In general, I can say that in my experience as an outsider, the quality and promptness of statistical reporting by the INS has improved notably over the past several years.

3. IS THERE ANY WAY THAT THE GOVERNMENT, OR THE RESEARCH COMMUNITY, COULD DEVELOP BETTER STATISTICS ON HOW MANY PEOPLE EMIGRATE FROM THE U.S.?

Yes. I would suggest that a sample frame be developed for departures from the U.S. (by air and over land borders), and that a statistically representative sample of these then be interviewed upon departure. As I understand it, the INA still authorizes departure controls, but these were abandoned by the INS for administrative reasons. I believe the U.S. may be the only developed country that does not have such departure controls in place, which makes it almost impossible to assess the degree of visa overstays and other abuses of legal entries. I believe INS now has the statistical competence to develop such a sampling approach itself.

4. EVERY PUBLIC OPINION POLL TAKEN ON LEGAL IMMIGRATION IN THE PAST SEVEN YEARS HAS SHOWN ANYWHERE FROM SLIGHT TO SUBSTANTIAL PREFERENCE FOR ADMITTING FEWER LEGAL IMMIGRANTS. ARE THERE ANY SERIOUS BIASES OR METHODOLOGICAL FLAWS IN THESE POLLS?

The only bias I know of is a common one in public opinion polls: that if the question concerns a concrete human individual or group, the answers tend to be more sympathetic and positive than if it concerns a more abstract and anonymous aggregate or number. Thus questions about specific immigrants or refugees, or about particular immigrant or refugee groups, tend to evoke more positive responses than do policy-type questions such as should overall numbers be increased or decreased.

Both types of answers reflect real opinions; they simply are directed toward different levels of enquiry. This phenomenon is similar to the "particularized" or "human interest" reportage used by many journalists, who recognize that their readers or viewers are more sympathetic to an individual person or a small number of cases than to an aggregate statistic (e.g. there is more concern about an isolated plane crash killing 50 people than about the much larger number of people killed the same day in widely-scattered car crashes).

5. IS THERE SOME MECHANISM THAT EITHER I OR SEN. KENNEDY HAVE NOT PROPOSED YET WHICH WOULD ENSURE BOTH: 1) A DIVERSITY OF IMMIGRANTS FROM ALL COUNTRIES OF THE WORLD, AND 2) THAT NO DISCRIMINATION -- FOR OR AGAINST -- WOULD RESULT TOWARD PARTICULAR COUNTRIES OF THE WORLD?

The principal factor that has led to unintended concentration of legal immigrants from a few countries is the overwhelming preferences given to family criteria. With the 20/20 vision of hindsight, we can now see that this tilt, intended to minimize family disruption and assist in immigrant assimilation, is now a powerful discriminatory provision, discriminating in favor of legal immigration from Latin America and Asia, and against immigration from Africa and Europe. In some settings (e.g. in the Philippines), elaborate family strategies of educational investment and individual migration are reportedly used (with the advice of "consultants") to facilitate whole-family migration by exploiting these provisions of U.S. law. Obviously this was not intended by the authors of such provisions.

The superimposition of an "independent" category of immigrants on this system may exacerbate this manipulation, and perversely enough would offer incentives favoring disruption of the independent immigrant's family rather than family reunification. For this reason, it is worth considering ways to sharply constrain the manipulation of the family preference by "independent" migrants seeking to "reunify" their families via secondary immigration to the United States.

On the other hand, the development of an "independent" category would have the salutary effect of provided a non-family based avenue for legal immigration. In my judgment, such visas should be offered on the basis of acquired characteristics of the applicant (education, language, technical skills needed by the U.S. economy, etc.) rather than by characteristics set at birth (national origin, family ties, race, sex, etc.).

Since past experience with immigration reform has generated substantial unintended consequences, I would respectfully suggest that proposed reforms incorporate a provision to prevent the unintended effect of any single country capturing a disproportionate share of immigrant slots. One could imagine this discriminatory outcome resulting from the combined operation of the family category and the new independent category. The proposed legislation could specify that notwithstanding all other provisions, no country could exceed a specified number of visas per year from all categories (other than refugee emergencies), and specify that in the unlikely event that such a provision is triggered how the available visas ought to be allocated.

In seeking alternative formulations, I would suggest careful assessment of the policies of other major countries of immigration (Canada, Australia, even France) with a view toward maximizing diversity and minimizing intentional or unintentional discrimination.

6. MY DRAFT BILL WOULD ELIMINATE CERTAIN FAMILY CONNECTION VISA CATEGORIES AND THEN PROVIDE A PERCENTAGE OF THE AVAILABLE VISAS FOR THOSE ALIENS WITH APPROVED APPLICATIONS ALREADY PENDING. ANOTHER APPROACH HAS BEEN SUGGESTED THAT WOULD — FOR A THREE YEAR PERIOD — PROVIDE A SIGNIFICANT NUMBER OF BACKLOG-CLEARING VISAS FOR THOS APPLICANTS WHO HAVE BEEN WAITING SINCE JANUARY 1, 1982 OR BEFORE ONLY. WHICH APPROACH DO YOU PREFER?

My understanding is that both allocations of backlog-clearing visas would fit within the overall immigration ceiling. If this is correct, then I see little basis for choice between the options. It is worth noting that many of those in the backlogs were well aware of their existence when they applied for visas. Unfortunately, as long as there is excess demand for immigrant visas, backlogs are inevitable; once these have been cleared others will appear, and some proponents will then argue for another "one-time" clearing of the backlogs.

7. WHAT IS YOUR OPINION OF MY PROPOSAL TO INCLUDE REFUGEES WITHIN THE OVERALL LEVEL OF IMMIGRATION SET BY MY PROPOSAL, WITH AN "ESCAPE CLAUSE" FOR THOSE REFUGEES ADMITTED DURING A REFUGEE EMERGENCY?

This provision is opposed by most of the refugee oriented groups, out of fear that bona fide refugees might find the door closed (as in the 1930s). They argue that refugees are quite different from immigrants, and deserve special treatment.

I am sympathetic to such points of view, and believe that special preferences ought to be available to those refugees for whom U.S. resettlement is the only alternative to death or persecution. However, in terms of their domestic impacts (demographic, economic, political, etc.), refugees and immigrants are very similar, and the dividing line is becoming more and more murky. Moreover, it is clear that a substantial percentage of recent and current refugee flows (especially those from Indochina) are being admitted on family or other criteria that make them almost indistinguishable from immigrants.

Hence unless one believes that there is no need for limiting overall immigration (a position held only by a fringe of opinion), advocacy on behalf of a given increase in refugee admissions ought to imply a willingness to constrain other categories of immigration. Thus I believe Senator Simpson's proposal to include refugees within the overall level of immigration is a sensible one, as long as there is a real escape clause for additional admissions during a refugee emergency. I would also tend to tilt more toward genuine refugee admissions in preference to the rapidly growing category of immigrants admitted solely on the basis of family ties.

Finally, as Senator Kennedy has cogently noted, only a small percentage of the world's 10+ million refugees in need of assistance can be resettled in the U.S. The UNHCR and most other international agencies hold strongly that repatriation and/or protection in the country of first asylum are by far to be preferred to resettlement in third countries such as the United States. One perhaps unspoken reason for this is the exceptionally high per-capita cost of U.S. resettlement vs. the preferred two alternatives. Genuine humanitarian concern for the plight of the bulk of the world's refugees should argue for directing more of the available funds (I would urge they be even larger if possible) toward the majority of the 10+ million refugees in need of assistance worldwide rather than to the small minority who are admitted to the U.S.

8. THERE WAS DISCUSSION AT THE HEARING OF THE 7% PER YEAR GROWTH IN THE IMMEDIATE RELATIVE CATEGORY. THE IMPLICATION WAS THAT THIS WAS MODEST GROWTH. ASSUMING CONTINUED 7% GROWTH, HOW MANY YEARS WOULD HAVE TO PASS BEFORE THE PRESENT LEVEL OF IMMEDIATE RELATIVE IMMIGRATION (223,000) DOUBLED?

As I indicated during the hearing, demographers would not think of a 7 percent growth rate as "modest". Given the exponential form of such growth, a 7 percent increase implies a doubling every ten years; thus the present level of 223,000 immediate relative immigration would rise to 446,000 per year by 1997.

Senator KENNEDY. Mr. Fragomen, we would be glad to hear from you.

STATEMENT OF AUSTIN T. FRAGOMEN, JR.

Mr. FRAGOMEN. Thank you, Mr. Chairman and Senator Simpson, for making this opportunity available to testify on these interesting proposals.

I have a lengthy statement that I would like to submit for the record, and I would like to just touch upon a few high points. And particularly I would like to touch on those portions of the bill, in Senator Simpson's proposal, which would most immediately affect the corporate community in its efforts to transfer personnel throughout the world.

We are particularly concerned about the labor certification provision. This is the same provision that was contained in the version of the bill several years ago, which would allow the Department of Labor to make determinations based upon labor market data without reference to specific job positions.

Although the labor certification affects relatively few immigrants, it is extremely important to American business because it allows employers to permanently employ persons with critical skills where there is a shortage of qualified Americans.

The present system allows individual recruitment campaigns and tests the availability of Americans for a particular job position. Broad categorization through labor market data is not responsive to the needs of international business because it does not allow for fine-tuned differentiations of availability.

I think the idea of bifurcating the system and separating independent immigrants from persons with family relations is certainly a laudable one, and overall numerical ceilings certainly would seem to make a certain amount of sense. I think there are obvious problems in including refugees in the overall ceiling for persons with family connections which have been alluded to by a number of the witnesses today.

I am particularly concerned about the limiting of preference classification in what is the present second preference to just children of permanent resident aliens. It is now married sons and daughters. I think it is important that we retain a concept that, in terms of a nuclear family, there are many times that we have children who are over 21 who are still very much part of the family and live with the family and are frequently students. And I think that the age should be extended certainly beyond 21 in those kinds of circumstances.

This bill would give an opportunity to expand the special immigrant categories—and I think that should be considered—to create a new category for managers and executives of multinational corporations such as that proposed by Congressman Mazzoli on the House side, those persons already exempted from Labor Department clearance.

I think a good argument can be made for university faculty members who are persons of world renown to be special immigrants and to broaden the ministers of religion category to include persons with religious commitments and go beyond just the present concept of priests and ministers.

In terms of the independent immigrant category, I would urge you not to restrict the first category to just Ph.D.-level professionals. In order to qualify in the category, a person has to have approval by the Department of Labor in one form or another, so there is really no adverse labor market impact. I would urge you to retain the present structure of persons who are professionals or persons of exceptional merit and ability.

In the Simpson proposal, the numbers do not fall down from the first category into the second. They go down into the non-preference, and I think it is important that there be a fall-through of numbers. I would urge you to include high-level business executives in that first preference category, and if you restrict the second preference category to skilled workers and eliminate the unskilled workers, I believe, as Senator Simpson has done, that there has to be a basis of distinction between skilled and unskilled. The 3 years is certainly a reasonable one, but I would suggest that it should be more than just training or experience, and it should include education as well, because there are many types of technical education as well as professional education that would allow a person to function immediately on a "skilled" level where he wouldn't have necessarily 3 years' experience.

I strongly urge the adoption of the investor provision. I think that is a long overdue idea. I think in terms of having a balance in the immigration system, it is very important to have an investor provision.

I would suggest that if we are really looking at generation of jobs, and we are looking for 10 jobs to be generated through investment, that $2 million investment is probably excessive. I think that you probably would have to buy a factory or some very capital-intensive business to spend $2 million to generate 10 jobs.

So I would think the monetary amount of the investment could very safely be reduced, possibly to $500,000 or so with the requirement of 10 jobs. I think that would be protective enough.

Curiously, both Canada and Australia have investor provisions with a figure of about $500,000.

Senator **Kennedy**. Excuse. me. We have about 4 to 5 minutes left to go vote, and I thought Senator Simpson would be back. When he comes back, we will continue, and I shall return.

Mr. **Fragomen**. Thank you.

Senator **Kennedy**. We will recess until then.

[Short recess.]

Senator **Simpson**. Well, thank you for your patience in accommodating that vote. I believe, Austin, you were in the midst of your remarks, so if you will please proceed, sir—and welcome to the Subcommittee.

Mr. **Fragomen**. Thank you, Senator. I am just about finished. I just had one final point to make and that was regarding the nonpreference category. I found the nonpreference category particularly in Senator Kennedy's bill to be a very interesting idea, but a bit anomalous in a sense. One of the curious things about our immigration system—and I think as a practitioner, I have a particular appreciation for this—it is sort of an all-or-nothing system; you either fit in narrowly defined categories, or you don't fit in them. And you can almost fit in every category and not get any cumulative credit. Either you are in the third preference or you are in the fourth preference, or you are not in them.

I would suggest that the point system be more reflective of the Canadian concept, where it is more restrictive to qualify, where points are awarded for family relationships that might not be close enough to warrant a family connection immigrant visa, and that the system really reflect much more a concept that we are not going out in the world market with a lottery to try to attract new people, but we are trying to devise a system to pick up all those people who have some reason, they have something to contribute, they have some family relation credit, they speak English, they speak foreign languages, they are well educated, they can make a contribution to society.

So I would suggest that the point system be modified along those lines so that the persons who go into this lottery or into this selection system really are persons who are highly qualified or do have relations in the United States. And I think that if you talk to persons who study such things, assimilability really follows those two trends. Persons are most able to assimilate if they are part of a large group or community or correspondingly if they have high skill and education levels.

But in any event, that was the final point I wanted to make, so I thank you very much.

Senator SIMPSON. Very helpful. Thank you very much.

[Prepared statement follows:]

STATEMENT

OF

AUSTIN T. FRAGOMEN, JR.

Mr. Chairman and Members of the Committee:

My name is Austin T. Fragomen, Jr., and I am pleased to have this opportunity to appear before you again to testify regarding immigration reform proposals being considered by the subcommittee. I am a partner in the law firm of Fragomen, Del Rey & Bernsen, which is limited to the practice of immigration and nationality law. I have written extensively on immigration topics. Among my books are Immigration Law and Business, Immigration Primer, Immigration Procedures Handbook, and Immigration Employment Compliance Handbook. I am also editor-in-chief of the Immigration Law Report. I am chairman of the Board of Directors of the American Council on International Personnel, and I also serve on the Board of Directors of the Center for Migration Studies.

On previous occasions, I have testified regarding all aspects of immigration reform, including many features of the legislation passed by Congress and enacted into law in 1986. One of the earliest topics regarding which I have given testimony was reform of the legal immigration system, in November 1981. I am pleased to see that the subcommittee has again returned to this important issue now that the legalization and employer sanctions issues have been resolved. I have consistently endorsed the concept of reform for the legal immigration system. Certainly, over thirty-five years of experience with the current system is sufficient to provide adequate information regarding where such reforms are needed. The subcommittee is presently considering a number of interesting proposals, many rooted in the suggestions of the Select Commission on Immigration and Refugee Policy, whose report in 1981 spurred the legislative activity that will hopefully culminate this year in the enactment of the next phase of immigration legislation: reform of the legal immigration selection system.

Labor Certification Proposals

One of the most important and sensitive areas for reform is with regard to the requirement of Department of Labor certification for aliens seeking permanent residence through an offer of permanent employment in the United States. The purpose of this certification is to assure that alien workers will not displace qualified and available U.S. workers or adversely affect their wages and working conditions. Currently, a determination must be made by the Department of Labor that U.S. workers qualified for the proferred position are unavailable in the geographical area of intended employment. The labor certification required has long been interpreted to mandate that an individual search of the labor market must occur for qualified U.S. workers in each case of permanent employment to an alien, except in those rare circumstances in which the Department of Labor has predetermined that a shortage of U.S. workers exists, as evidenced by placement of the employment field involved on Schedule A of the Department of Labor regulations.

The proposals before this subcommittee would permit the Department of Labor to forgo individual recruitment campaigns and determinations with regard to each job opportunity offered to an alien. Rather, the Department could base labor certification decisions on labor market data without regard to the specific job opportunity offered; this data can be based on the availability of U.S. workers on a nationwide basis, rather than specifically in the area of intended employment. Under the proposals, no provision is made for individual labor certification procedures, and it is virtually assured that the Department of Labor would not provide such procedures unless required to do so by statute.

The proposals to streamline the labor certification procedures are premised on the view of many, including the Department of Labor, that the current procedures are unduly time-consuming and extremely costly.

Particularly as administered at present by the Department of Labor, these criticisms have merit, with labor certification applications pending for more than fourteen months in some parts of the country. The irony of this situation, however, is that the Department of Labor currently has at its disposal the mechanism through which the time and expense of labor certification applications could be greatly reduced: the scheduling of precertified occupations for which national market data is already readily available to demonstrate shortages of U.S. workers. Schedule A of the Department of Labor regulations was intended as a schedule of just such precertified occuations, and is clearly within the current authority of the Department, but has not been widely used by it. At present, only physical therapists and registered nurses appear in Group I of Schedule A.

The reluctance of the Department of Labor to make use of its current authority to schedule precertified occupations, thereby reducing dramatically the need to conduct individual certification procedures in every case, is bewildering. Major U.S. employers are completely familiar with the shortages that presently exist in a number of well-defined high technology and science specialties, having conducted extensive nationwide recruitment campaigns for qualified persons year after year without satisfactory results. The data backing up the experience of these employers is available to the Department of Labor and should be used by it to make necessary and clear-cut additions to the present Schedule A.

Concerns about the cost and time involved in the individual labor certification procedures are further mitigated by another proposal pending before this subcommittee: the elimination of aliens with offers of employment in unskilled occupations from the immigration selection system. Offers of employment for such positions usually present the most difficult and time-consuming labor certification applications, and undoubtedly make up the bulk of such applications. It is not unlikely that as many as three-quarters of the present applications would be eliminated by this reform of the immigration selection system. Since many of the remaining applications would be covered by Schedule A, appropriately utilized and regularly revised to reflect the latest labor market data, the number of individual labor certification applications would be reduced dramatically, with a resultant saving in time and expense for both the Department of Labor and employers.

The proper use of Schedule A by the Department of Labor and the elimination of unskilled workers from the immigration selection system obviate the perceived need to eliminate the individual labor certification procedures, an elimination that would create undue hardship for many major U.S. employers. The use of labor market data to create schedules of precertified occupations cannot possibly cover all situations in which a demonstrable shortage of U.S. workers exists. Therefore, such schedules should be used only in a positive direction, to permit elimination of the individual labor procedure when national labor market data demonstrates a shortage of qualified U.S. workers. The schedules should not be used negatively, to foreclose the opportunity to demonstrate the unavailability of qualified U.S. workers if an occupation is not included on the schedules. Employers must have the opportunity to show that, based on their particular job requirements for a specific position, documented as necessary for the job to be performed, they are unable to locate qualified U.S. workers.

The necessity of providing employers with this opportunity is a particular requirement in view of the sorry history of the Department of Labor in acquiescing to special interest groups in implementing the labor certification procedures. Given the sometimes arbitrary behavior of the Department, there is no assurance that inclusion or exclusion of occupations from its schedules will not be based on influence from unions or professional associations rather than based exclusively on objective market data. Prior to the institution of the individual labor certification procedures, when the Department of Labor relied on national labor market data, the Department was subjected to a number of lawsuits which it lost precisely on the grounds that it had been so arbitrary and capricious in using that data. This experience should give the subcommittee pause in considering whether to return to such a situation.

The opportunity to manipulate data to fit the needs of particular interest groups can clearly arise with scheduling, particularly in the breadth with which an occupational category is defined. While the Department may be able to show, for example, that there are adequate numbers of qualified U.S. engineers, employers with a documented need for Ph.D.-level engineers can certainly demonstrate that there is a chronic shortage of qualified U.S. workers. Yet, pressure from engineering groups might lead the Department to refuse to include Ph.D.-level engineers or some specific subspecialties within that groups on a precertified schedule, or might even lead the Department to include engineering generally on a schedule of occupations for which certification is not available.

In view of this possibility, employers must have the opportunity to document through the individual certification procedures that a shortage of U.S. workers exists. What often makes someone important to an employer is very specific experience that cannot be duplicated in the job market. For example, a systems analyst might have experience in developing management and accounting systems that take account of the particular rules and methods prevalent in South American countries. A multinational company doing business in those countries might find the skills of such a systems analyst essential for a position involving developing computer systems for its subsidiaries located there. This need exists irrespective of the general availability or unavailability of systems analysts in the United States, and the employer should have the opportunity to demonstrate that it cannot find an equivalent person in the U.S. labor market. Similarly, a business person with experience in marketing information systems products in the Far East has a pool of experience and information that is essential for a company doing business in that difficult region. A company could probably show that there are not U.S. workers available to fill this position, even though there may be many U.S. business persons with similar academic credentials and years of general experience. A schedule that does not account for specific employment positions, and a system that does not permit the opportunity for employers to demonstrate a shortage of U.S. workers would ill serve U.S. employers and ultimately the U.S. economy.

I believe that a satisfactory revision of the labor certification provision in the current law would make clear that the labor certification procedure can be based on national labor makret data and schedules of precertified occupations, with the opportunity provided to employers to demonstrate that for a particular position a shortage of qualified U.S. workers exists. Such a revision could include the following language:

"In making such determinations the Secretary of Labor may use national labor market information. Where appropriate, Secretary of Labor may base such determinations on this information without regard to the specific job opportunity for which certification is requested. When the employer believes, however, that the specific job opportunity has special requirements not adequately accounted for in the national labor market information, it shall be accorded the opportunity to demonstrate that the conditions in this section are met, through such procedures as the Secretary of Labor shall specify."

Language such as that suggested would take into account the legitimate needs of major U.S. employers while still responding to the concerns expressed before this subcommittee regarding the present expense and delays in the labor certification process.

Special Immigrant Categories

While not included in the current proposals before this subcommittee, I would like to endorse a proposal that has been suggested by Representative Romano Mazzoli in a efficiency package of immigration amendments put forward by him this year: creation of a special immigrant category for business managers and executives transferred to the United States by their multinational employers.

This proposal will permit immigration by aliens to be employed in the United States in executive or managerical capacity for an affiliate, parent, subsidiary, or branch office of a corporation or other business entity for which the alien was employed abroad in a similar executive or managerial capacity. To qualify, the alien must have been employed abroad for the related business entity in one of the qualifying capacities for the year immediately preceding application, or if already in the United States, for the year immediately preceding entry. In addition, the corporation must have foreign assets of at least $50 million or foreign income of a stated level. The corporation must also have at least 100 full-time U.S. workers, and must continue to engage in foreign operations of an equivalent magnitude. The maximum number of special immigrants per employer per year would be 75, but could be less based on a complicated formula included in Representative Mazzoli's proposal.

This proposal goes far to satisfy the needs of major U.S. employers to transfer key personnel on an international basis. Currently such personnel are accorded some benefits by inclusion on Schedule A of the Department of Labor regulations, thereby obviating the need for an individual labor certification in their cases. Given current backlogs in immigrant visa availability, however, especially in the sixth preference category in which many such executives and managers must qualify, it is nearly impossible to make required transfers on a timely basis. The result is often inappropriate utilization of nonimmigrant visa categories to effect the transfer, a situation that is often unsatisfactory to the transferees who need assurances of security in order to undertake such a major step as international relocation.

Therefore, a special immmigrant category for such managers and executives, already determined by the Department of Labor not to be taking jobs away from qualified U.S. workers, would be an appropriate response to the needs of U.S. businesses seeking to expand U.S. trade and commerical opportunities on an international basis. A less satisfactory, but still acceptable, response would be inclusion of such managers and executives into the proposed top preference for independent immigrants, currently limited in the proposals to Ph.D.-level professionals and persons of exceptional ability.

Several other groups could also be included as special immigrants, in view of their unique qualifications for immigration and their numerically-limited size. First, university professors who can qualify for labor certification under Schedule A, Group II of the Department of Labor regulations surely deserve admission to the United States as immigrants outside of the numerical limitations imposed on preference immigrants. These persons must be demonstrably of exceptional ability in the sciences or arts, and are limited to the most preeminent of foreign scholars and scientists, those with international recognition. Their admission to the United States on an expedited basis in clearly in the national interest.

Also meriting special immigrant treatment are those persons with a religious commitment who are not considered ministers of religion: nuns, brothers, monks, missionaries and other similar religious persons. This expansion of the present special immigrant category for ministers would fill a need not presently addressed by the immigration statute. It would not permit the inclusion as special immigrants of religious lay workers without a demonstrated religious commitment, such as are currently included under Schedule A, Group III of the Department of Labor regulations.

Because I am suggesting the inclusion of additional groups in the categories of special immigrants, I believe it would be necessary to increase somewhat the ceiling proposed for annual special immigrant admissions to account for the additional groups. A limit of 15,000 admissions per year, for example, might be more appropriate than the limit of 10,000 mentioned in the current proposals.

Family-connected Immigration

The proposals for family-connected immigration before this subcommittee follow the basic contours of the Select Commission's proposals, and have been the subject of much study and review. One of the core elements of these proposals is to place a specific numerical cap on overall immigration, by counting immediate relatives of U.S. citizens and refugees under the overall cap. The concept of an overall cap, thereby assuring congressional control over the levels of immigration, is acceptable provided there is periodic review of the cap to assure that it remains an adequate reflection of immigration needs and pressures.

I must question, however, the inclusion of refugees within the numerical cap for family-connected immigration. While it is true that many refugees have family connections to the United States, such connections are only one factor to be considered in determining whether particular candidates will be admitted as refugees to the United States. In fact, many refugees have such family connections only because at some point one of their relatives was admitted to the United States as a refugee without any such family connections. Why refugee admissions should be used to reduce the numbers of visas available to family-connected immigrants is something of a mystery. If an overall cap on immigration, including refugees, is a desirable goal, then a separate cap for refugees should be included in the law that does not affect the cap placed on family-based or independent immigration. This separate cap would further the concept of control of overall numbers of immigrants without having an adverse impact on an immigrant group with no logical connection to refugees.

Many in the business community also object to the exclusion of all unmarried sons and daughters over the age of 21 from the proposed preference category for family members of permanent residents. The basic concept of the proposals related to family preferences is a good one: to provide benefits to the true nuclear family unit, while eliminating those groups that are part of a more extended concept of family relationship. In placing an overall cap on immigration, it is necessary to draw a line at some point, and the numbers of eligible immigrants who qualify as part of the nuclear famly of citizens and residents is such that realistically few other family members can be permitted to immigrate under the selection system.

Nevertheless, in today's world the concept of the nuclear family does not end when children reach the age of 21. Particularly among such sophisticated groups as business executives and professionals, children continue to be a part of the family unit and are supported by the parents after that age, usually while they are still in school. To more realistically cover the core family unit in these situations, the subcommittee should consider permitting immigration for unmarried sons and daughters of permanent residents up to an age such as 25, in order to asure preservation of familyn units in those cases in which the family continues to support children beyond age 21.

Independent Immigrant Categories

I have long endorsed the concept proposed by the Select Commission of a bifurcated immigration selection system providing separate visa allotments to independent immigrant categories. This feature of the proposals before this committee is salutary. The proposal currently being reviewed would include four categories of independent immigrants, including a first preference to Ph.D.-level professionals and persons of exceptional ability, a second preference to other skilled workers with an offer of permanent employment, a third preference to large investors, and a final preference to independent immigrants selected on a point system.

The first preference is defined must more restrictively than the current top job-offer preference, the third preference category. If this restrictive definition, excluding professionals with ordinary university degrees, is maintained, the proposed top preference category will not come close to utilizing the 25,000 visas per year allotted to it. In this case, the system should be structured so that these visas remain available to persons with offers of permanent employment in the United States, by dropping into the proposed second preference category for skilled workers. Making these visas available instead to independent immigrants qualifying of the basis of the point system would negate the policy goal of protecting the U.S. work force by removing the visas from the labor certification requirement. Under the proposed point system for independent immigrants, many immigrants will be admitted to the United States who will be competing directly with U.S. workers for jobs. While this result may be an acceptable price to pay to permit "new seed" immigration currently foreclosed under the present preference structure, the numbers of visas available to those immigrants under the point system should not be maximized by permitting the use of excess top-preference visas by that category. It is important that those visas remain subject to the labor certification requirement by mandating that excess top-preference visas fall into the second preference for skilled workers.

It is preferable, however, that the top preference category not be so restrictively defined. The current third preference category covering members of the professions, defined to include persons with university degrees in fields requiring those degrees, does not create a hardship for U.S. workers, since any persons immigrating in this category must obtain labor certification demonstrating that U.S. workers are unavailable. As it stands, only a limited number of immigrants come to the United States in this category, all of whom have labor certifications. There is no apparent reason why professionals should not continue to be given this preference for immigration.

I also believe that high-level business executives should explicitly be included in the top preference category. The way that the INS currently defines persons of exceptional ability in the sciences or arts, it is nearly impossible for such executives to fit within that classification. Yet, it is absurd that such executives, sometimes the presidents or chief executive officers of multinational companies, should not be able to qualify in the top preference for immigration, thereby increasing dramatically the waiting period for their immigration.

As noted above, the limitation of the second preference category to skilled workers, thereby dropping unskilled workers from the preference system for immigration, should alleviate much of the current pressure on the labor certification process and is therefore a satisfactory revision of the current system. It is also suitable that the qualification for skilled labor be defined by a certain amount of training or experience. This definition, however, should also make clear that education can suffice to qualify a person for skilled labor, since the redefinition of the top preference category will place into this category a number of persons with university degrees qualifying them for positions that require such degrees but no experience. Therefore, the proposal should be amended to require "at least 3 years' education, experience, or training."

The inclusion of a preference category for investors is a desirable change from the present immigration selection system. This proposal had been eliminated from previous immigration bills because it was somehow considered "un-American" to "buy" one's way into the United States. This way of looking at the investor proposal is inappropriate. A balanced immigration bill will provide for a number of aspects, such as "new seed" immigration, family-connected immigration, and immigration that encourages the development of job opportunities in the United States. The investor provision is the biggest single contribution to U.S. economic development in these proposals

It is clearly in the national interest to encourage persons to invest in the United States and particularly to encourage them to invest in enterprises that will increase U.S. employment. The ten-employee requirement of the proposals is therefore a good one. Creating this level of employment, however, often will not require the size of investment mandated by the proposals–$2 million. Only manufacturing-type businesses would need such an investment to cover the costs of structures and other capital needs. Many labor-intensive business ventures, however, such as service businesses, do not require such a large-scale investment to produce far more than ten employment positions. The proposal should encourage these types of investments as well, as they further the salutary goal of the proposal. An investment of $500,000 would be adequate in many instances to assure substantial employment opportunities. This size investment is similar to the amount suitable for obtaining immigration to Canada and Australia.

If the size of the investment is carefully documented, and evidence is required to assure that the employment positions are in fact being created, a lesser dollar amount than proposed would benefit the U.S. economy and assure adequate investments. In view of the benefits of this type of immigration, more than the 5000 visas proposed should be allotted to the category. There are quite likely more than this number of foreign nationals ready and willing to invest substantial sums in the United States each year, and a numerical limitation that will account for their numbers is desirable, particularly in view of the benefits to the United States from such immigration.

The proposed point system for selection of independent immigrants must be carefully devised to assure that "new seed" immigrants are preferred who do not take jobs needlessly from U.S. workers. The proposals before this committee would permit the immigration of large numbers of persons with few job skills required by U.S. business and in direct competition with U.S. workers. Particularly if being a native from an "adversely affected country" is included in the factors for which points can be awarded, the system would clearly make eligible for immigration virtually any English-speaking high school graduate from one of these countries. All such a person would need to do is arrange employment prior to coming to the United States and he or she would be eligible under the point system proposed by Senator Kennedy. Alternatively, having a U.S. citizen sister or brother, even without prearranged employment, would qualify the person for immigration. In neither case would the person have received a single point under the system for having a desirable job skill or any advanced education, training, or experience.

The system should be structured so that some points be necessary for job training, experience, or education in order to achieve the minimum points for immigration. Points for being from an adversely affected country should be eliminated. This factor would be considered by many a throw-back to the national origins system for choosing immigrants, and would introduce ethnic considerations into immigrant selection that should be considered unsuitable in today's world. In addition, the emphasis on young age should be eliminated in the point structure, as it tends to favor those persons who are less likely to have advanced skills or training; it is ironic that when persons have reached an age by which they may well have desirable skills and make substantial creative contributions to the United States, no points are awarded to them. More points should also be awarded for higher-level educational attainment; under the current proposals, an alien receives more points for a high school education than for a university degree. If changes are made to the factors for which points can be awarded and the number of points for different factors, the basic structure of the point system is a good one. These changes are required, however, to assure that independent immigration does not put undue pressure on the U.S. workforce.

Provision for Aliens Not Entering the Job Market

The proposals presently before this subcommittee do not include provision for those aliens who seek to enter the United States for extended periods and who have no intention of entering the U.S. job market and competing with U.S.workers for employment. This group includes retirees, parents of citizens and permanent residents, and persons of independent financial means. Under the present preference system, provision for such persons was made as nonpreference immigrants.

These persons do not detract from the U.S. economy, and in fact their presence in the United States demonstrably enhances the economy, since they clearly spend money here and often buy U.S. residences in order to have a place to stay when visiting this country. Many of these persons have no desire to become permanent residents, but merely wish to be able to come to the United States for periods more extended than the present nonimmigrant visa categories permit, in order to visit with U.S. relatives, take extended vacations in warmer climates than are available in their home countries, or simply enjoy the culture and marketplaces of the United States.

A nonimmigrant visa category to permit extended visits by those persons of means or demonstrable support would fill the gap created by the unavailability of the nonpreference category because of visa oversubscription. There would appear to be no adverse consequences arising from such a category and some benefits for the U.S. economy. The category would also end some hardship for elderly relatives of U.S. citizens or residents who have no clear means under the current law to remain with family members in the United States. Many Canadian nationals in particular would benefit from the ability to enter the United States for extended winter periods without their current fear of being considered intending immigrants because they will remain in Florida or Arizona for most of the cold months in Canada.

Senator SIMPSON. Dr. Keely.

STATEMENT OF CHARLES B. KEELY

Dr. KEELY. Thank you, Senator. I am going to limit my oral testimony to the question of a cap, although I do have, as you know, a formal statement touching on other matters in your draft bill.

The concept of a cap on legal immigration, it seems to me, is the latest answer to the idea that immigration is out of control. People refer to the fact that there is unlimited immigration for immediate relatives of citizens and that there is a snowball effect in terms of possibilities for qualifying other people to come. I think the Senator himself talks about the all-time record holder of the individual from New York who qualified something like 60 people for future immigration.

When refugee entries were thought to be out of control, at least out of the control of Congress, because of the parole provisions, we developed the consultation mechanism of annual reviews in the 1980 Refugee Act.

Refugee admissions have gone down from about 270,000 to 72,500 authorizations in the 7 years of operation.

The Immigration Reform and Control Act of 1986 was the answer to the claim that illegal migration effectively removed our borders from meaningful government control. Sovereignty itself was claimed to be in jeopardy. That act addressed mainly workplace incentives and devised programs to prohibit employment and to channel many of the undocumented into legal but temporary employment on an as-needed basis.

The initial information is that that bill is working as was hoped for, but of course the game is not up yet. We need to see how it works out, since there are a number of years to go yet before all of the provisions are implemented.

But IRCA, by cutting back on illegal movement and permitting us to regain control of our borders, was promoted as a way to reduce pressure to cut back on legal immigration. However, I think that the draft bill, at least to me, seems based on the contention that legal immigration is itself in some senses out of control, and the cap is proposed as an additional tool to get it and to keep it—particularly to keep it—under control, and to be a bulwark against those political forces, particularly those who favor family reunification who, if they prevail, would in some people's opinion harm the Republic.

I think that the idea or the rhetoric of out of control or loss of control has been overdone. And like hard cases, overblown rhetoric makes bad law. I do not think legal immigration is out of control, and in my testimony, I talk about the number of possible areas that some people may think are out of control, for example, that if it is out of control, it is negative. I include demographic considerations and economic in my testimony.

But I suggest that, just as Senator Simpson used to ask audiences to leave the Emma Lazarus poem on the Statue of Liberty and the statue itself aside when considering policy issues, that we now leave aside the rhetoric of loss of control. Dark forebodings of fear to me mislead us as surely as the rosy haze of nostalgia.

Once that is done, I know of no impact of legal immigration at current levels that should rush us to place a cap on overall immigration.

The principle of a cap is of course separate from what should be the specific level. The current level, it seems to me, will force choices and force them very soon about immigration of different kinds.

Recent discussions in Geneva with Vietnam showed quite positive movement on letting Amerasian children enter. The current summit, although it did not have particularly notable movement on the case of Soviet Jews, may be a portent of some movement in that area.

If these things come to pass and refugee admissions are moved up for some important foreign policy reasons, do we want to pit group against group because of a cap?

Do we want to forego foreign policy options and goals related to refugees during the consultation process, perhaps, because of feared domestic pressures from ethnic groups?

Is legal immigration in effect so out of control that we are sure that we need to bring it to heel, and we are confident we can do it and are willing to pay the price of doing it?

I am not so sure that the price, particularly of pitting groups against groups in this country, is worth what may be and I think would be the result of the cap at the level as addressed in this bill.

What is really bothersome, it seems to me, to proponents of immigration reduction is the extent of relationships now qualifying for preferences and the open-ended nature of the exempt immediate family of citizens. The draft bill as we know makes a number of changes in those areas.

It strikes me that what we ought to do is to make those changes first. I suggest that if those changes are made, immigration will be reduced, not only directly because of the impacts of those people no longer being qualified, but also indirectly, because they will no longer be able to sponsor relatives in the future.

I do not expect an immediate decline in the numbers. Obviously, we have a good deal of inertia in the current system because of backlogs, and we do have the effects of legalization. But it seems to me that once we let that work itself through the system that we will see a decline in the demand for immigrant visas coming into the country because we will not be having fourth, fifth, and a good piece of the second preference coming in in the first place and then ultimately qualifying or trying to qualify other family members.

It also seems to me that what we can do is to look at the effects of not only IRCA, but also if the elimination of these preferences were passed into law, what we could do is use the triennial Presidential report mechanism in IRCA to look at the impacts and to, in a sense the way Dr. Teitelbaum talked about, assess—not by a modelling or simulation, but an actual operation—what the impacts of reducing family preferences would be in terms of the demand and the further qualifying of people for immigrant visas.

In sum, it would seem to me that we do not need to have, then, a meeting as proposed in the draft bill from Senator Simpson of various secretaries to review the cap. It would to me it would be more preferable to use the triennial review to address the very kinds of questions, and it seems to me one could add to the questions for the triennial review by the President, which would be submitted and discussed with Congress, to add the question of the need for a cap in the future.

In summary, I think the draft—and I have limited myself to the draft from Senator Simpson—is a mixed picture. Some ideas in it are very good, it seems to me, and long overdue. Some, I think are at best premature, and in some senses arbitrary, and I would have to say in my opinion, although not intended, would be harmful to the national good. Those, I suggest, should be rethought, their premises re-examined, and their operation evaluated.

I suggest that we digest the impacts of IRCA and the changes in selection criteria if they were passed by Congress. IRCA has in place the mechanism for review, evaluation and recommendations to Congress in its triennial Presidential report, and I suggest that that process be used before we willingly adopt a cap.

If we lay aside the rhetoric of uncontrolled migration, it is hard, at least for me, to conclude that legal immigration is harmful to this country at its current levels and is not to be feared. More correctly and positively, I think it is and continues to be beneficial to the United States.

A cap at this time, in my opinion, does not make sense. Despite the good intentions—and I say that sincerely—behind the idea, it may be the cap and not legal migration at current levels that will harm the Republic.

Thank you, Senator.

Senator SIMPSON. Thank you very much, Dr. Keely. That was very provocative and direct, which is your wont, I have found—I like that; I do that myself—and pretty powerful and critical, and yet some positive things, too, that we should examine and will.

[Prepared statement follows:]

Charles B. Keely
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The Price of Controls on Immigration

My name is Charles B. Keely. I am the Donald G. Herzberg Professor of International Migration at Georgetown University. I am testifying for myself. I do not speak on behalf of any group and my analysis and opinions are my own and should not be construed as necessarily endorsed by my University.

I was requested to comment on the draft proposal by Senator Alan Simpson and will confine my remarks to that draft. If the draft become law, it would take us down new paths of immigration policy. The new departures include: a cap on overall immigration; a triennial review process to evaluate and reset the cap; and the separate treatment of family and economic preferences. The bill contains other important changes in policy which are variations of, rather than departures from past practice. Parents of citizens are downgraded in the petitioning process; unmarried sons and daughters over 21 of lawful permanent residents would no longer qualify for a preference; married sons and daughters and brothers and sisters of U.S. citizens, the fourth and fifth preferences, will be eliminated from the preference system for future petitioning; investors are given a preference; visas based on economic criteria are increased; and per country ceilings are tightened over the current practice.

This is a new proposal and time for analysis has been short. I will limit my remarks to major policy issues. The analysis of possible or probable dynamics of the various changes proposed will require time. The bill is so broad and complex that, as has been the case with such legislation in the past, there are sure to be unanticipated consequences. Such analyses will require reflection. I suggest no headlong rush to judgment on so momentous a set of changes.

Let me start with the centerpiece, a cap, and its companion, a triennial review to reset a cap.

The concept of a cap on legal immigration is the latest answer to the rhetoric of borders out of control. When refugee entries were thought to be out of control, we developed the consultation mechanism of annual reviews. Refugee admissions have gone down from about 270,000 to 72,500 in the seven years of operation. The Immigration Reform and Control Act of 1986 was the answer to the claim that illegal migration effectively removed our own borders from meaningful government control. Sovereignty itself was claimed to be in jeopardy. The Act mainly addressed workplace incentives and devised programs to prohibit employment of undocumented aliens and to channel many of them into legal but temporary employment on an as-needed basis. The signs of impact are in the direction of reduced movement, as expected. Much initial voluntary compliance has been forthcoming. The game is not over yet, however. We are still in the early stages of implementing the full force of sanctions and the programs to phase out the use of foreign labor sources. We do not yet know if IRCA, when fully implemented, will be a continuous basis to control illegal migration.

IRCA, by cutting back on illegal movement and permitting us to regain control of our borders, was promoted as a way to reduce pressure to cut back on legal immigration. However, the draft bill under consideration seems based on the contention that legal immigration is also out of control. A cap is proposed as an additional tool to get it under control and to be a bulwark against political forces that, if they prevail, will harm the Republic.

I have often stated my opinion that I thought the rhetoric of loss of control was overdone. Overblown rhetoric, like hard cases, makes bad law.

Is legal immigration out of control? Out of control means that a process with negative consequences is underway. What are the undesirable consequences of current legal immigration? Are they demographic? Is the U.S. population growing too quickly in the eyes of Congress? Do the sponsors intend to espouse a goal of population reduction for the U.S. to be achieved more quickly than the current course of U.S. demographic rates? That is what this draft implies. The implications of that proposition require examination.

Are these purported undesirable consequences economic? In 1986, 27 percent of the legal immigrants with an occupation (63,373 of 234,107) were professionals, executives and managerial workers. Those 63,000 additions to our workforce represented 16.5 percent of all adult immigrants between the ages of 20 and 30 in 1986, regardless of their labor force status. That is hardly the "wretched refuse" of Emma Lazarus' poem.

The sponsor of this draft bill, Senator Simpson, frequently requested audiences to leave that poem and the Statue of Liberty aside when considering the policy issues leading to IRCA. May I suggest that the rhetoric of loss of control now also be laid aside. The dark forebodings of fear mislead as surely as the rosy haze of nostalgia. Once that is done, I know of no impact of legal immigration at current levels that should rush us to place a cap on overall immigration.

The principle of a cap is, of course, separate from the specific level. The utility and objectives of imposing a cap in principle ought to be debated, rather than taken for granted while debate flows around the specific level. It is difficult, however, to leave out of the conversation any reference to the proposed level in this bill. The cap proposed makes the point that immigration should be cut back. A radical reduction is not proposed but it does hold the possibility of very soon causing additional backlogs in reuniting lawful resident alien families. Very recent discussion in Geneva with Vietnam showed positive movement on letting Amerasian children exit. The current summit could portend more open doors for Soviet Jews to depart the Soviet Union. Do we want to pit group against group over this cap? Do we want to forego foreign policy options and goals related to refugees because of feared domestic pressures from ethnic groups due to the cap? Very concretely, are we about to pit Mexican Americans against Vietnamese Americans; are we willing to risk fanning the fires of anti-Semitism because of a cap. Is legal immigration so out of control, are we so sure of the way to bring it to heel, that we are confident of what the price will be and are willing to pay it? I think not. I do not think legal migration is out of control. There are better ways to address the concerns of those, at least some of those, who favor a cap.

What is bothersome to proponents of immigration reduction is the extent of relationships now qualifying for preferences and the open-ended nature for exempt immediate family of citizens. The draft bill excludes parents of citizens from the immediate family category and puts them in a preference status. The current fourth and fifth preferences are eliminated for the future. Adult unmarried sons and daughters are excluded from the preference for immediate families of permanent resident aliens. Finally, the cap is imposed.

I suggest that the elimination of the fourth, fifth and part of second preferences will reduce not only the demand for visas directly but decelerate the demand in the future through reduction of subsequent family petitions. The inertia in the current system with its backlogs and the impact of legalization of petitions mean that it will take time for the system to work itself through. Reductions will not come immediately. Review of backlogs and how they worked through the system after the 1965 Immigration Act may be instructive. If Congress were willing to accept the changes in family relations petitioning, the need for a cap may become moot after current registrants who would be "grandfathered" have moved through the system.

This scenario is precisely the kind of issue that should be monitored and evaluated by a mandated periodic review. This could be accomplished by the triennial report required of the President in IRCA. The first of those reports is due January 1, 1989. The President could be required to address the issue of a cap in the 1992 report. Much of the impact of IRCA will have worked through the system by the early 1990s and the effects of the narrowing of family preference, if adopted, may have begun to show up.

If I am correct that the impact of the constriction of family reunion criteria will result in a reduction of immigration, then the cap will be superfluous. Perhaps the cap is a method to help force adoption of the draft's reduction of family reunion aspects of immigration. The drafter may feel that the fourth and fifth preferences will not be dropped, parents will not be eliminated from the exempt category and adult sons and daughters of permanent resident aliens will not be dropped from the current second preference without the threat of the consequences of a cap. A cap would produce backlogs unless it is accompanied by changes in the selection criteria.

Many will object to the proposed changes in selection criteria in this draft and to those in S.16 introduced by Senator Kennedy. Given current backlogs, the legalization program and the operation of the law in the face of demand, backlogs will probably increase under current law to the point of being the equivalant of a "sick joke." Like the mortgaged quotas of the 1950s, backlogs will stretch beyond the Biblical three score and ten in years of waiting.

I agree with critics of change in the family criteria that those criteria recognize family values that, although not shared by all, are as American as other family values. Yet for Congress to decide that family ties, responsibilities and links of the kind in current immigration law are to be reduced does not in and of itself show disrespect for traditions of some Americans. A policy decision must be made about a scarce good. To say that reunion of spouses and minor children of lawful permanent resident aliens should take precedence over adult brothers and sisters of citizens and that interminable backlogs make no sense, is not to deny the reality of or dishonor the ties among adult siblings revered and maintained by some Americans.

If the political decision can be taken to alter some of the current criteria, the cap may become superfluous and justifiable only in the eyes of those terrified by immigration.

I would suggest, therefore, that an evaluation of the incremental effects of each of the changes in the draft of family selection criteria be made on the deceleration, direct and indirect, of future visa applications.

Permit me to endorse the concept of separation of family and economic criteria. The point system, however, strikes me as superfluous and likely to have no particular impact on the characteristics of future immigrants different from the characteristics of current or recent immigrants. I suspect the nature of immigration today is that the vast majority of immigrants (and especially so of adults) is such that they have been in the U.S. for some appreciable time (1 year or more) at some point prior to getting a green card. The residence may have been legal (on a temporary visa) or illegal. Education or work in the U.S. is probably part of the background of the majority of current immigrants. Most, I suspect, regardless of visa category have family networks here. The draft, despite use of the term independent migrants and the point system, seems to me to propose a system in which U.S. experience, training and kin networks will still be as advantageous under the proposed policy as it is under current policy.

I do not see the justification for the proposals to reduce per country ceilings if more than 20,000 immigrant visas of any sort are used by nationals of a country in a given year. Six countries (China mainland, India, the Dominican Republic, Korea, Mexico and the Philippines) and one colony (Hong Kong) probably will be affected. (Jamaica could be added to the list soon.) These countries accounted for about 30 percent of the

1986 entrants in 1986. That proportion does not give me pause. I would like to know why it should disturb others. Further, if the family selection criteria were changed, the same effects would take place for countries as for immigration in general. The proposed reductions in visas would prolong the process of clearing backlogs. To what end? What national good can possibly result from keeping spouses and children of lawful resident aliens separated for a longer period just because they come from a country with perfectly lawful high visa usage under current law? It is an invitation, almost an incentive, to illegal migration. I fail to see the wisdom of this provision at all.

In sum, I support the idea of a triennial review and recommendations as required by the IRCA of 1986. I find the cap to be at best a premature step that has unexamined implications and, I suspect, downright harmful incentives for intergroup enmity and probably an encouragement to illegal migration. It may be superfluous if the selection criteria are altered and some family relationships eliminated or downgraded in the immigration petitioning process. I suggest moving on the selection criteria changes, reviewing the results on visa demand (being aware that legalization will have an independent effect) and examining the cap concept at a later date.

The result would be a transition allowing the digestion of the enormous changes implied by IRCA and selection criteria changes such as those suggested in this draft bill. Refugees would continue to be treated separately with annual consultations and limit setting. Foreign policy and national interest goals and criteria will not be threatened by the effects of an arbitrary cap that requires a choice between refugees or family reunion in a given year. Finally, I see no national good served by reducing immigration from a country in the subsequent year due to visa usage.

My reading and evaluation of the draft bill results in a mixed picture. Some ideas are very good and overdue. Some, I judge, are at best premature; in some instances quite arbitrary and probably in operation harmful to the national good. Those I suggest be rethought; their premises reexamined; their operation evaluated. Let us digest the policy change of IRCA and those suggested for selection criteria. IRCA put in place a mechanism for review, evaluation and recommendations to Congress in the triennial Presidential report. I suggest that process be used before we willingly adopt a cap. If we lay aside the rhetoric on uncontrolled migration, it is hard to conclude that legal immigration is harmful to this country and is to be feared. More positively and correctly, it continues to benefit America. A cap does not make sense at this time. Despite good intentions, it may be the cap, not legal migration, that will harm the Republic.

Senator SIMPSON. Let me go to Dr. Teitelbaum. I really appreciate your making this special effort in writing this nocturnal piece here. You always amaze me how you come up with things that are complex indeed and yet, when read by the layman, are hearable and understandable. You always have had that remarkable gift, and you have done it again in the presentation of these 10 points, and I am sure that Senator Kennedy and I will be pursuing those. They are excellent observations, in my mind, and important admonitions and instruction for us if we can accept it.

Well, you state in your testimony the phrase that we should "minimize visa preferences for characteristics set at birth and maximize preferences for acquired attributes, skills, hard work"—that provision. How well does our present legal immigration system attend and direct itself to this approach you suggest?

Dr. TEITELBAUM. Remarkably poorly, Senator. The way the system has come to work, I again think unintentionally on the part of all of its creators, is to give overwhelming preference to what a sociologist would call an ascriptive characteristic—a characteristic that is not escapable by the individual something that the person is born with. Such characteristics would include race, sex, national origin—age, I suppose, is another that is not given that much attention in the immigration law. Current law gives overwhelming preference to those kinds of characteristics, and underwhelming preference to characteristics that can be acquired after birth.

Senator SIMPSON. Our information sources for us to deal with the review of the "level of immigration"—I prefer that phase; I think that is more honest. I have no desire to quote "cap" as if something were out of whack or out of control. There are some things out of whack, but control is not one. What is the information that Congress has to have, at a minimum, if we are to make a decision on whether an executive branch proposal for raising or lowering immigration levels is acceptable? How do we do that?

Dr. TEITELBAUM. Well, it is a difficult process, and ultimately subjective. There are objective pieces of evidence that would be typically included. They would include the items that Dr. Briggs mentioned having to do with unemployment, underemployment. They would include labor demand in certain sectors. I think they would have to include demographic trends in the United States—and quite a few others that would be part of the raw material. But ultimately, as in so many other things that legislators have to deal with, it would be a subjective judgment based upon the grist of that material.

Senator SIMPSON. Let me go to Austin Fragomen. You have worked on these issues for so many years. I don't know anyone with a more superb background or consistent background—the House Immigration Subcommittee, 20 years' private practice; you have dealt with chairmen and ranking members of all varieties and descriptions. You are deeply respected in the things you have done. This is just for my own interest, and perhaps, I think, too, Senator Kennedy. What has been your impression of the implementation of the new immigration law, dealing with illegal immigration—because I seek the broadness of your background. Have employers in general voluntarily complied with the verification requirements? Has it been unreasonably burdensome? Has INS followed our directives and our mandate to educate employers? Have they fairly administered the legalization program?

I would be very interested in your views.

Mr. FRAGOMEN. Thank you, Senator.

Dividing the answer into two parts, regarding the employer verification system, I think INS has done a really outstanding job. I think that we were all surprised at how helpful they have been, and the extent to which they have not taken an enforcement mentality at all, and they have gone out to corporations and worked with their personnel people and have really made a big effort to educate the public.

So I think in that sense, they absolutely followed your advice, and I think they are very sensitive to the potential of sunset on the whole program if they did not. So I think that they have really done that quite well.

It will be interesting to see what happens once the educational phase is over and they move more into an enforcement mode.

In terms of corporations per se, they really just view doing I-9's and the related documentation as just being another set of papers that they have to generate. So I don't see that they view that as any major problem. The system is a little archaic because they don't have any provision for microfiche or digitized storage or some of the more modern techniques that are actually used by companies to keep records. So they have to physically keep these forms in metal file cabinets, which is a bit regressive, but it is not a major problem.

As far as the amnesty program goes, I think that the private bar was very surprised with the liberal attitude in terms of adjudicating amnesty applications.

I think there have been some problems in terms of a reluctance by INS to come forth and really make a policy statement regarding what they would do with dependents of amnesty applicants. I think there has been some uncertainty there.

Practically speaking, anyone who has ever been involved in the field knows that there is no real risk to those people because INS is incapable of going out and finding them and taking them all and deporting them. I mean, it just couldn't happen.

It is hard for me to believe that INS isn't aware of that as well. It might have been smarter just to pretty much acknowledge that up front, rather than holding the specter over everyone's head that this could happen.

So that would be the only one commentary I would have. Generally, I think they have done a terrific job in both areas.

Senator SIMPSON. If I might ask you if you could provide for the record—you mentioned in your testimony the Department of Labor lost some major court cases when it conducted labor certifications in the past using general market information—if you could provide those cases for the record, I would be very interested in those.

Mr. FRAGOMEN. I would be delighted to do that.

Senator SIMPSON. Great.

Here comes the chairman with his cigar, which means that I will attenuate my remarks.

Senator KENNEDY. Yes, we'll expedite the hearing just like that. [Laughter.]

Senator **Simpson**. Wait, I have got to get to Charlie. I have a question of Dr. Keely, a spirited gentleman, and this is spirited testimony. You use a lot of references to rhetoric, and you had some pretty good stuff in there yourself, I thought—"dark foreboding fear"——

Dr. **Keely**. I use you as my model.

Senator **Simpson**. I actually read that, Charlie; do you know that?

And phrases like, "pitting Mexican Americans against Vietnamese Americans, are we willing to risk fanning the fires of antisemitism because of a cap"—wow. I couldn't have done that well.

But you are saying something. You said something about "the rosy haze of nostalgia" and paralleling that. And other than the fact that I think you have a fix on this word "cap"—it appears 20 or 30 times in your testimony—I think another fix you have is "out of control"—and I don't know where you obtain that, because this proposal addresses the issue of how shall we choose our new immigrants. I don't believe I have used that dazzling old phrase about the Statue of Liberty since, well, a few months, maybe September 1985 or way back. But this proposal would set a national level of immigration, that is what we are talking about, based upon the present level of immigration. We are not talking about cutting anything. There are no cuts proposed in either measure.

So I just wanted that clearly heard. It is not legal immigration that is out of control; it is family reunification that is out of control. And there is a difference in my mind, a very serious difference. If there is credible evidence to say whether we should go up or whether we should go down, that is what this subcommittee wants to hear on legal immigration. The bill provides the reports and the material and the information to go with that.

But with those comments and, as I say, a powerful statement and some good, honest shots, I guess the thing—and the only question, and then I will conclude—as we get toward or decide what is a level of immigration for this country, what are the people that should be in that level of immigration? Should they be back to "classic" immigrants, even though we can't reach that, I believe that would be troublesome, but certainly we all know what we are looking for. We knew in the Select Commission—"seed" immigrants, special skills, special abilities, furnishing us special persons.

There is no reliable evidence now to indicate we should reduce immigration or to increase. So I ask you, providing for the studies and the reports, and providing for the determination by the President, and not letting it go into the 30-year syndrome as to what we should be doing, in that sense, in addressing it in that way as I have rephrased what we are up to—what is wrong with setting a level of immigration? What is wrong with limiting family reunification, which has overwhelmed the system with 85 percent figures? Are you saying that that is bad public policy? Do you know of any Western nation that does not set appropriate levels of immigration, if indeed they accept any immigrants at all?

So that would be an inquiry.

Dr. **Keely**. I think the question, Senator, is when we set our immigration policy, does that of necessity have to include a number—call it whatever you want, a "cap"—beyond which we will not go into a given year, and that if we go beyond that in a given year, or averaging, as your bill does, from one year to the next and so on, that we have to cut back on some groups in that given year. It seems to me that the concept in the draft that you have basically says that if in a given year—if in this year we take more refugees and if the immediate family of citizens is at its normal levels, whatever that runs, however we define that, even if we drop out the parents or whatever—that that leaves fewer visas available than for other categories like the reunion of the immediate family of permanent residents, and we could add to the backlog in that category.

That is what I am saying—we are being forced to choose between a refugee, which may have important foreign policy goals, and the reunion of family of people we have admitted lawfully. I don't think that that is a good way to go about it.

It seems to me we can control, we can review, and do it responsibly without saying this is the limit beyond which we will not go in any given year.

To me it is like—and I know people agree on the wisdom or nonwisdom of this—but to me it is like putting a constitutional amendment to require a balanced budget in any given year regardless of what goes on in that year, as if having a deficit at all—and I am not advocating the experience of the last few years—but to say that a deficit at all in any given year for any reason is untenable, to me that is not a good idea. And that is what I am saying here. To have a cap, and saying that if we do something in the refugee area, we are going to pay for it the next year by limiting, say, reunion of permanent aliens' families or reducing the numbers of people that we may need in the labor categories, or however the mechanism works out, that, I don't think is the correct way.

So I would support, for example—and we have a triennial review process now under IRCA, and that is supposed to be reported on in terms of the impacts of immigration and so forth—it seems to me we decide what we want in terms of immediate family of citizens. And I would suggest if we do drop the parents, I don't see any reason why we have to in any way restrict that or in any way make that compete against. If that is going to grow, it is going to grow.

It seems to me what we then do is cut out the other references. You have suggested three—two majors ones and piece of another one. And I also suggest, Senator, that if you do that, as I mentioned in my oral testimony, you are going to reduce the amount of immigration into the United States; the numbers of people will not be there, and the further snowballing won't be there either.

So I don't see any reason why we can't have refugees decided the way they are now. It is looked at every year. Immediate family, let them come as they come, and then we have the limit on the other family and other——

Senator **Simpson**. Maybe we are just talking about the word "cap." But what I am saying is that we need a level of immigration in the United States. Are you saying we don't need a level of immigration in the United States? That is what I would like to ask.

Dr. **Keely**. I would say that what we need is a system similar to what we have now and that we review that. And if you want to put it "yes" or "no"—no, we don't need a level to be set in law beyond which we cannot go in any given year, and if we do, we have to cut back on other kinds of people. I don't think we can do that, no. I think it is a bad idea.

Senator **Simpson**. Well, you know, the way we do it now we make a lot of people wait, and that is the way that is. Immediate relatives of permanent residents have to wait for 2 years, 5 years, 6 years, 10. So we don't want to lose track of how we do it now.

But you said a very interesting and disturbing thing. You said refugees set on the basis of foreign policy.

Dr. **Keely**. No. I said I included——

Senator **Simpson**. Oh, yes, you did.

Dr. **Keely**. No, no.

Senator **Simpson**. You did. Well——

Dr. **Keely**. I said I would include that—I would include that if refugees are set partially on foreign policy considerations, and I think you know that as well as I do.

Senator **Simpson**. Well, you go back and look at the record, now. If we are going to do it that way, not on the basis of the U.S. and the U.N. definition, if we are doing it on the basis of foreign policy, well that's how we got into this box in the first place.

Dr. **Keely**. But our law says that we will admit them not only on the U.N. basis, but in the interest of the United States. I don't know how that decision excludes foreign policy consideration.

Senator **Simpson**. Well, we don't exclude it, but we don't want to emphasize it, because——

Dr. **Keely**. I didn't say it was exclusive, I said it is included.

Senator **Simpson**. Well, anyway, we will have a visit on it at some future time. You know we will.

Dr. **Keely**. Well, I don't see you every year like David North, so I would appreciate it.

Senator **Simpson**. All right. Thank you, Mr. Chairman, for your courtesy.

Senator **Kennedy**. Thank you.

I think the rather basic point that is worth examining is whether, as a result of the current system, we are seeing the numbers really out of control. Yet, according to the figures and the statistics we heard earlier, it seems that there has been only a very small, incremental increase, if we look over the period of the past 10 years. We heard earlier in the day it is a very modest increase. While we have significant problems, obviously, with the flow of illegals into the United States, we attempted to deal with that last year.

But it would be my impression, unless I am wrong, that there has been a very modest increase in terms of legal immigration. I think the panel would all agree with that?

[Pause.]

Senator **Kennedy**. Well, let the record show that there were three heads, I think, nodding—two, I observed, and one rubbing of the chin, which I can't quite interpret. [Laughter.]

Dr. **Teitelbaum**. I am trying to decide whether the 7 percent in the numerically unlimited category is a small average increase over 15 years. I think it is larger than small. So on that category, I would suspend comment.

The others, I don't think have any problem, as you say, Senator.

Senator **Kennedy**. Well, the 270,000 numerical limit stays the same; some reduction in the numbers of refugees may occur. We have been facing an extraordinary flow of refugees, obviously, because of Southeast Asia, and we are going to be facing others, I suppose, in the future. There always seems to be a crisis in different parts of the world, but we decide those numbers annually.

But it would seem that a 7-percent increase is only a small part of that total amount. If you extrapolate it, you are only talking about a few thousand every year, and given what we are talking about in terms of the population of our country on illegal immigrants, it doesn't seem to be that our immigration policy is really out of control.

Well, I appreciate the one point we are sensitive to, and that is to not only have a review in terms of the committees of Congress, but to try and write into the legislation some sunset provisions or some provisions that will insist that we take a look at our immigration policy in a timely fashion. I think that is worthwhile. It is a concept that was accepted in the bill of last year, and I think we want to try and do that in the future so we don't find these rather dramatic alterations and changes which, as Dr. Teitelbaum pointed out, are really unpredictable.

I am hopeful we can continue to work with you as we move ahead in trying to act on Senator Simpson's concerns, along with Senator Simon's recommendations, and we have his proposal, and we want to have it examined by others as well.

I want to thank you all very much for your testimony here today and your responses. I apologize for the interruptions that have taken place in the course of the morning because of recorded votes on the Senate floor.

Thank you very much.

Senator **Simpson**. Thank you very much. It is a pleasure.

[Whereupon, at 12:22 p.m., the subcommittee was adjourned, to be followed by a markup of S. 1611.]

APPENDIX

SELECTING IMMIGRANTS: THE FUTURE OF AMERICAN IMMIGRATION POLICY

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Presented at Hofstra University, October 1987

Introduction: The Immigration and Nationality Act of 1965

The immigration act of October 3, 1965 is a remarkable piece of legislation. It repudiated a doctrine of racial and ethnic superiority enshrined in this nation's immigration policy as the national origins quota system which favored some countries over others for immigration purposes on the basis of their presumed place in a racial hierarchy. The system stained our image and burdened our conscience. The nativism that supplied the motive force for national origins quotas is not yet purged from our system and so continued vigilance is required. Nativism and restrictionism seem to bring out the worst in us as a nation.

The Act of 1965 abolished the discriminatory national origins quota system and established a more equitable immigration policy. The law reaffirmed and sanctioned our traditions of favoring family reunion; it provided for the admission of professionals and skilled workers in the interest of our national economy; and it set aside visas to be allocated for the relief of refugee problems. These three objectives continue to be sound, humane, and fair criteria for the national interest of this republic and its citizenry.

The Act of 1965, therefore, was a good start. It was the best that could have been realized at that time.

The recent Immigration Reform and Control Act of 1986 left our basic immigration selection system intact. The 1986 law addressed problems of illegal migration. Congress is now turning its attention to regular immigration after two decades of experience with an immigration policy unburdened by national origins quotas.

Deficiencies of the Current Immigration System

The experience of the past two decades has made clear deficiencies that need correction in order to make immigration law responsive to the needs of the present and the foreseeable future. Immigration is a constantly changing phenomenon. No law can be expected to regulate for an indefinite number of years such a fundamental aspect of our national life and a source of our envied vitality. Some revision of the 1965 Act is necessary. The question is how to amend the law.

The organizing principles of the 1965 Act remain sound. They are worth maintaining, in fact strengthening, in any new legislation. They are:

1) the reunion of American citizens and lawfully resident aliens with their families;

2) the health and growth of the American economy; and

3) the alleviation of global refugee problems in accordance with our national interest, the stability of the international system and the good of people suffering injustice.

These principles are each so important that one should not be sacrificed for the sake of another. This is one deficiency of the 1965 Act. That legislation basically said that the immediate family of a U.S. citizen could come to America as a immigrant with no wait. Then, immediate families of prior immigrants, some relatives of U.S. citizens (like adult brothers and sisters), immigrants with needed skills and refugees were all mixed in a system to distribute 270,000 immigrant visas each year. The system gave preference to relatives, workers and refugees in seven categories, mixing these various types of people in the preference system. The spouse and children of immigrants, for example are second preference; professional level workers are third preference, and brothers and sisters of citizens are fifth preference.

In 1980, a law removed refugees from the preference system (they had been seventh preference) and set up a Presidential-Congressional consultative mechanism to set the level of refugee admissions for each year depending on the world situation and U.S. interests.

Immigration reform should continue in that direction. The law should deal with the three organizing principles separately: (1) a set number for family reunion, with its own preference system; (2) a flexible number for needed workers to be periodically determined; and (3) continuation of the flexible number for refugees following current practice under the 1980 Refugee Act. The result will be three mechanisms specified in law to deal with the admission of the three types of immigrants based on the three organizing principles of immigrant and refugee policy.

This type of law would actually be easier to administer and, more importantly, would avoid confusing immigration goals. There would be no question of mixing goals by unused visa numbers in one category "dropping down" to a lower, but differently oriented visa preference. Refugees will continue to be addressed through the processes laid out in the 1980 Refugee Act which set the level of refugee admission independent of the other two categories, namely, family reunion and needed workers.

The First Tier: Family Reunion

Family reunion should have, as it now does, priority in American immigration policy. "Immediate relatives," the spouse, children and parents of citizens, should continue to enjoy the current treatment, that is, be immediately eligible with no numerical ceiling. There is no justifiable reason to limit or delay the reunion of spouses and children of citizens or to inhibit their ability to help their aging parents.

The 1965 Act also allocated the majority of the 270,000 visas distributed under the preference system to family reunion applicants. It is a strongly held value by many Americans, some would even say a right of an American citizen, to have family members join him or her in the United States. Because there is a limit to the number of immigrants our country can absorb, however, a scale of priorities must be established.

In view of the fact that it becomes necessary to control the number of immigrants our country can absorb, it is inevitable that we must establish priorities for non-immediate relatives of citizens and for all relatives of permanent resident aliens.

The structure of preferences for family members, their percentages and sequence of priority of the 1965 Act need adjustments and modifications. One gets the impression they were thrown together hurriedly and haphazardly, possibly because there was no experience of actual demand on which to develop a considered system. Now that we have 20 years of experience, it is possible to apply corrective modifications. I suggest a rearrangement that would in practice increase the visas for immediate families of permanent resident aliens, given the current experience.

First I suggest that the current 270,000 visas be distributed to the four family reunion preferences (the current first, second, fourth and fifth preferences). I suggest an additional 30,000 visas be reserved for labor preferences under ordinary circumstances (the current third and sixth preference).

This limit of 30,000, however, should be flexible. It can be reduced in times of recession and expanded in times of economic expansion in response to the actual needs of our economy.

The increase to 300,000 preference visas can easily be accommodated given the steady declines in recent refugee admissions which have resulted from the processes specified in the 1980 Refugee Act to set refugee admission levels.

The family reunion preferences can be rearranged in the following way:

First Preference -- Unmarried Son/Daughter of U.S. citizen 10% of the 270,000 visas or 27,000 visas.

Second Preference -- Married Son/Daughter of U.S. citizen 10% or 27,000 visas.

Third Preference -- Spouses/Children, Unmarried Son/Daughter of Alien Resident 50% plus the unused first and second preference visas

Fourth Preference -- Brothers/Sisters of U.S. Citizen 30% plus unused visas from other preferences, if any.

This system assures a minimum of 270,000 visas to current family reunion categories. The first two preferences would have up to 27,000 visa numbers each. Between 1979-1984 (the latest year of published INS data) the first preference above never exceeded 7,600 and the second preference above (currently the fourth preference) never exceeded 21,000. (It was under 15,000 in 1984.) Some unused numbers, therefore, would almost certainly be added to the 135,000 visas reserved to reunite spouses and children of legal residents who are not yet citizens.

The third preference in the new scheme I am proposing and currently the second preference seems downgraded. In fact it is not. The 50 percent of 270,000 visas would mean 135,000 visa numbers, plus the fall down from the first two categories. In 1984, the first and second preference categories above used a total of 22,250 visas. Under this policy option, an additional 31,750 visas would have been added to the 135,000 to reunite spouses and children with parents -- to strengthen the nuclear families of American's immigrants. This would have meant 166,750 visas for the immediate families of immigrants in 1984 if this system was in force. In 1984, about 113,000 current second preference visas were distributed but there is a huge waiting list for visas for immediate families of immigrants. This proposal would have reduced that backlog by over 50,000. In human terms a backlog of visa applicants means husbands and wives separated and children unable to live with their mother or father. This proposal would also, I submit, reduce illegal immigration. In focusing on the work place as the magnet for undocumented movement, we forget that huge backlogs in second preference are also a probable contributor to illegal migration while families wait for immigrant visas. This proposal reduces family separation and removes an incentive to illegal migration with all its related problems for the nation and the migrants.

Finally, the fourth family preference in this system would include the current fifth preference and allot some 81,000 visas. This would also help reduce the backlog which is in this category.

The Issue of the Fifth Preference

At this point, I wish to focus on the current fifth preference or admission of brothers and sisters of U.S. citizens. I strongly recommend against the elimination of the fifth preference, or restricting it to only unmarried brothers and sister. Recent legislation has been introduced to eliminate this preference. It is tempting to avoid future backlogs by eliminating what one sees as a source of potential trouble, i.e., the fifth preference. Some think that immigrants legalized under the current amnesty program will become citizens and sponsor brothers and sisters in a never ending snowball of Latin and Asian immigrants. The proponents of such change argue that an adult brother or sister is not close enough to merit inclusion as part of family reunion. The argument is gratuitous. It may be so for some, but it certainly is not generally so. We strongly oppose this move because it goes against a concept of family reunion that is as American as apple pie, tacos, pizza and egg rolls. It is about time we recognize this and stop expecting Americans of many backgrounds to apologize for what we all recognize as a contribution to the strength of American life. This proposal also smacks of the racism and nativism that haunts this nation. When Mexicans, other Latins and Asians benefit, it seems time to change the immigration rules.

For many Italian-Americans, a group I am very familiar with because of my work, but also for many other ethnic groups, brothers and sisters, whether or not they are married, are an integral part of the family. Elimination of this preference category would violate a sacrosanct value, that American citizens should be able to live with their family according to their own tradition and culture, strengthening bonds of loyalty and obligation.

The other argument trotted out to justify the elimination of the fifth preference is that its retention causes serious backlogs which are unacceptable. I respect the sincerity of this concern. Living with a backlog, however, is certainly preferable for American citizen sponsors than living with no prospect of reuniting their families. Major backlogs are expected to occur in only a few countries (China, India, Philippines, and Mexico, primarily). U.S. immigration policies should not eliminate a whole category of people because of the visa demand structure of a few countries. Imposing a restriction on all U.S. citizens from being joined by their families makes sense only if tidiness, an absence of a "messy" backlog outweighs the human values of family life. That would be the triumph of bureaucratic rigidity over basic humanity.

Further, projections of backlogs are often misleading. Simple extrapolation of present backlogs into the far-off future produces staggering results. In practice, however, many on waiting lists are "no shows," people who think about coming, sign up "just in case" but do not actually follow through. I can talk about this phenomenon with some authority, having had this experience with Italian backlogs over the years.

Finally, the fifth preference is a major source of variety in our immigration streams. Fifth preference immigrants make up notable proportions of entrants from a number of European nations. What is instructive, however, is that over the last decade the proportion of brothers and sisters from European countries like Italy, Ireland, Poland and the United Kingdom has declined precipitously. The built-up demand, the cause of backlogs, was reduced over time but brothers and sisters are still an important and steady source of European migration.

In short, the fifth preference played a major role in clearing European backlogs that built up under the national origins quota system. It still plays an important, although more modest role compared to the past, in migration from these countries.

Many of the countries of newer immigration as a result of the 1965 Act are now experiencing the types of backlogs that the 1965 legislation helped alleviate for Europe. It seems unfair to close the door on them now. It does not make sense at the same time to reduce the variety of immigrant source countries by closing off an important avenue for European migration which is at an historical low as a proportion of immigration.

In sum, why reduce variety in immigrant sources? Why close down an important route for traditional immigration countries? Why close off to Asians and Latins now what was used by Europeans as a result of the 1965 reforms? Why not support the family values of American citizens, who are willing to live with backlogs and wait their turn? The only answers to the questions that I can think of is nativism rearing its ugly head again, aimed especially at Asians and Latins, or a mean narrowness that values tidiness over humanity.

The Case of European Immigration

Let me address the effects of the 1965 Act on European migration. The 1965 Act opened up migration from Asia and Latin America. However, it did so at the expense of European and Canadian migrants. Let me give some illustrations. In 1984, Italian immigration was 30 percent of its 1965 level; Ireland was less than one-fourth the earlier level; British migration was one-half; Germany at one-fourth. For Europe as a whole, the 1984 level on immigration was about 55 percent of the 1965 level.

In 1965 European immigration represented 38.5% of the total immigration into this country. In 1984 it represents only 11.8% of total immigration. It is hard to believe that the authors of the 1965 Act intended or even anticipated these results.

To all intents and purposes, these consequences of law constitute discrimination in reverse. The 1965 Act came into being in order to bring some fairness into the sharing of immigrant visas by all countries of the world, regardless of national origins. In point of fact, the theoretically ideal system of one world-ceiling with visa access on a first-come first-served basis resulted in the traditional European immigration being drastically disadvantaged. Fairness now demands that the course be corrected in order to effect a balance of justice in the distribution of visas.

Per-Continent or Regional ceilings

In an attempt to fashion a fair and balanced law, the following proposal is being discussed as a possible solution: the establishment of world-wide separate ceilings on visas for the categories of family and workers with subceilings on a continental or regional basis. The result would avoid what now happens -- the concentration in a few countries of an unreasonable proportion of visas to the detriment of other countries. For instance, given a world-wide ceiling of 300,000, 75,000 can be reserved for Europe, 90,000 each for Latin America and Asia, and so on. Whatever numbers are not used by a continent could be placed into a pool and redistributed on an as needed basis by the continents with backlogs.

I discuss this proposal with trepidation, aware that some may find it, at first sight at least, a return to the "national origins" concept with all the implications of discrimination and racism. The organization I direct were in the forefront in the fight against that quota system in 1965. We would never support a return to it.

There is a substantial difference between the "national origins" concept and a continental or regional ceiling concept. The "national origins" system was tainted at the source: it was an attempt to favor some countries at the expense of others. The per-continent ceiling system, instead, is meant to provide a more even access to visas to qualifying candidates throughout the world. It is meant to preserve plurality in sources of immigration and an admittedly rough evenness in the opportunity to enter the U.S. for qualified immigrants.

Tier Two: The Good of Our Economy

The second tier proposed is a separate ceiling for people who can contribute to the good of our economy. This group includes the present third and sixth preferences and "investors" who create new jobs.

The number of visas allotted to this group should be fixed at about 30,000. Given the usual oversight functions of Congressional committees, experience with this number can be evaluated and adjustments made as economic conditions demand.

In order to make this concept operable, substantial modifications have to be made in the process known as "labor certification." Labor certification is a proceess whereby the Labor Department makes a judgment that an immigrant entering the U.S. on the basis of skills and a job offer will not result in lowering wages and working conditions and that a U.S.worker is not available for the job in question. Labor certification is not succeeding.

The primary difficulty is the laborious procedure which at times requires years before an application is processed and a visa becomes available. An employer cannot wait this long to fill pressing needs. The labor certification procedure should be simple enough to allow an application to be processed in a reasonable length of time. If it can be done for the growers of the West and Southwest as the law now requires, it can be done for all employers.

The certification should also be based on a regional rather than national test of labor availabilty. Blanket certification should be established for a specific job category where a need is ascertained to exist regionwide or nationwide. Unreasonable labor market tests, where the outcome is a foregone conclusion, ought to be eliminated.

Finally, there is no need for a continued distinction between the highly skilled (current third preference) and other needed labor (the current sixth preference). If workers are needed, they are needed. The issue is availability of American workers at prevailing wages and conditions. If they are not available and immigrants with the requisite skills are, then no further distinction seems necessary. If fact, further distinctions imply an ability for the federal government to fine tune the economy that is ludicrous on the face of it. All it does is create more jobs for federal bureaucrats.

TIER THREE: REFUGEES

The 1980 Refugee Act developed a procedure for setting refugee admission levels. A mechanism of consultation between the President and Congress contain the flexibility to set an annual level of refugee admissions and allows weighing a variety of factors including the global situation, other countries' actions, our national interests and the safety of victims of oppression. Current disagreements about refugee definition and admission decisions are matters of importance but are essentially different from the consultation mechanism for setting levels.

The 1980 Refugee Act was a precursor of a three-tier system. Visas can be allotted for each of the three immigration objectives as the logical and workable extension of what the 1980 legislation accomplished for refugees.

In conclusion, the 1965 Act has been in operation 20 years. The country has ample experience with its results, that is the trends and fluctuations it has created over the last two decades. On a policy level, equality and fairness were the driving forces that brought it into existence. These have been unanticipated problems and limitations. They can be corrected. The policy reforms would enhance the equity of the law as well as the interests of the American people in supporting strong families and in admitting needed workers. The good can become better.

Asian American Legal Defense and Education Fund
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October 22, 1987

The Honorable Senator Edward Kennedy
United States Senate
Washington, D.C. 20510

Dear Senator Kennedy:

The Asian American Legal Defense and Education Fund (AALDEF) submits the enclosed position paper as AALDEF's testimony opposing the passage of S-1611, the Immigration Act of 1987. Please include this testimony in your subcommittee's hearing record of October 23, 1987 and for circulation among your subcommittee members.

AALDEF opposes S-1611 in its present form due to its discriminatory impact upon Asian immigration which has historically been limited by restrictive and exclusionary immigration laws directed explicitly and implicitly against Asian immigrants for over one hundred years. Although AALDEF does not oppose the expansion of nonpreference visas for immigrant groups that no longer have current family ties within the present preference system, AALDEF opposes the qualitative and quantitative restrictions place upon the second and fifth preferences used by most Asian immigrant families and the arbitrary point system proposed for nonpreference immigration. More significantly, the transfer of responsibility for setting prospective numerical limitations from the Congress to the President coupled with the introduction of a discriminatory point system reopens a door for an immigration policy that will have a disparate impact upon future immigration from Asia. Without articulating a clearer policy goal of what should be the future composition of the "melting pot", the implementation of such a bill in its entirety will have a detrimental effect upon Asian immigrant families seeking family reunification.

Any discussion of immigration reform affecting family reunification must include a more exact vision of the future "melting pot". Otherwise, unintended consequences may result in dismantling the Immigration Act of 1965--enacted as remedial legislation to end discriminatory immigration quotas and elevated family reunification to the foremost policy level of immigration reform. The Select Commission on Immigration and Refugee Policy explicitly reaffirmed this foremost policy when it recommended preserving the family preference categories without modification and raising the numerical limitation of the preference system to ease backlogs.

AALDEF recommends that the current family categories be maintained and that the expansion of nonpreference immigration be achieved under a system with a clearer and more comprehensive vision of future immigration. Such an approach can only help clarify what ingredients are needed in America's "melting pot" of the future.

Sincerely,

Stanley Mark

Stanley Mark
Program Director

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Comments on S. 1611
A Bill to Amend the INA to Effect Changes in the Numerical Limitation and Preference System for The Admission of Immigrants

Summary of Position Paper of the Asian American Legal Defense And Education Fund

I. SUMMARY OF S. 1611

On August 6, 1987, Senator Edward Kennedy (D-Ma.) and Senator Daniel Patrick Moynihan (D-N.Y.) introduced S.1611, a bill to modify the numerical limitation and visa preference systems of the Immigration and Nationality Act (INA). An identical bill, H.R. 3143, was introduced in the House of Representatives on the same day by Congressman Brian J. Donnelly (D-Ma.). Although facially neutral, the legislation, if enacted, would have immediate and potential restrictive effects upon legal immigration from Asian nations. Of utmost concern, the Kennedy bill:

1. Delegates to the President and certain Cabinet members unprecedented authority to alter the overall numerical limitations on preference and non-preference immigration. The bill provides for a review mechanism by which recommendations on revisions to overall numerical limitations, developed by certain Cabinet officials and certified by the President, take effect thirty days after submission to Congress if Congress does not within that limited period pass a joint resolution prohibiting such recommendations from taking effect;

2. Restricts eligibility for family reunification immigration under the preference system by redefining the second and fifth preferences, the two categories most heavily utilized and relied upon by Asian immigrants. The bill excludes from second preference eligibility adult sons and daughters of permanent resident aliens, and from fifth preference eligibility married brothers and sisters of U.S. citizens;

3. Reduces by two-thirds, from 64,800 to 21,600, the number of immigrant visas currently made available each year under the fifth preference, which suffers the largest backlog of any family reunification preference;

4. Establishes a point system for non-preference immigration where an applicant must be accorded at least 70 points to qualify to register for a visa. The point system disproportionately favors immigrants from Western Europe and disadvantages immigrants from Asia, Mexico, Africa, Central and South America, and other areas of the world

by providing a large block of additional points to persons seeking to emigrate to the United States from Western Europe.

II. AALDEF POSITION

AALDEF cannot support S. 1611. As a general matter, AALDEF does not have any objection to the concept, endorsed by the Select Commission on Immigration and Refugee Policy, of making provision in the immigrant admissions system to facilitate the immigration of persons without current family ties in the United States. This bill, however, goes well beyond this discrete goal, which could be accomplished by a balanced, and racially neutral (in form and effect) expansion of the non-preference program. The legislation cuts deeply into qualitative (eligibility) and quantitative (number admitted) areas within the current preference system that the Select Commission recommended not be altered, with the effect of severely restricting legal immigration from China, India, Korea, the Philippines, Hong Kong, and Mexico under the fifth preference. Equally offensive is the racially biased non-preference system proposed in the bill, which provides favorable weighting to applicants from Western Europe, based upon criteria which incorporates elements of the wisely discarded and racist national origins system. Finally, and perhaps most dangerous, the bill proposes a fundamental and unprecedented shift in the process by which this country decides upon overall numerical limitations upon preference and non-preference immigration, whereby family reunification immigration could at some future date be drastically reduced, and racially biased non-preference immigration increased, upon recommendation of the President, without a single member of Congress voting upon the change. The issue is simply too important not to be put to an affirmative vote by Congress.

America is of two minds about its heritage. We are a land of immigrants, and our vitality and richness as a common people has its origins in that diversity. Yet there lies latent in this nation a potential to strike out at individuals perceived to be foreign. It becomes manifest in times of economic instability and political uncertainty. It is cyclical. In the face of a burgeoning trade deficit and rising resentment over the perceived success of Asian Americans, this nation has experienced a marked rise in incidents of violence, harassment, intimidation, and vandalism directed against Asian Americans. Such activity was well documented by the U.S. Commission on Civil Rights in its 1986 report, "Recent Activities Against Citizens and Residents of Asian Descent". Anti-Asian sentiment is not new to this nation. The internment of Japanese Americans during World War II is a tragic reminder. The history of American immigration law provides little solace. The 1986 Civil Rights Commission report stated:

Discrimination against persons of Asian origin in the United States can be traced back to the middle of the 19th century. Legislative limitations on the activity of Asians or restrictions on their entrance into the United States persisted until well into the 20th century. In 1872 the Chinese Exclusion Act barred the immigration of Chinese. As each new Asian ethnic group immigrated, it was subjected to treatment similar to that encountered by the Chinese. In 1917 and 1924, Congress enacted two immigration acts that virtually halted the immigration of most Asians to the United States for nearly 30 years.

The discriminatory provisions of S.1611 cause us great concern in light of the documented current anti-immigrant and anti-Asian sentiment and the history of this nation's pre-1965 exclusionary immigration policies. Regardless of whether or not this bill was intended to target Asian immigration, the bill restricts Asian immigration by its disparate impact. Legislation can be proposed to facilitate immigration to the United States of persons who lack family ties without reducing qualitatively or quantitatively family reunification immigration.

1. NUMERICAL LIMITATIONS ON IMMIGRATION SHOULD BE AMENDED ONLY THROUGH AFFIRMATIVE LEGISLATION FOLLOWING THOROUGH CONGRESSIONAL DELIBERATION AND DEBATE. THE JOINT RESOLUTION MECHANISM IS UNACCEPTABLE. A SELECT COMMISSION SHOULD BE APPOINTED TO RECOMMEND CHANGES IN NUMERICAL LIMITATIONS.

By mandating that the Executive branch periodically review and formulate recommendations concerning revision of the overall numerical limitations on family and independent (non-family) immigration, and by allowing such recommendations to take effect automatically if Congress does not enact a joint resolution disapproving such recommendations within thirty days, Congress gives to the branch of government that is responsible for enforcement of the immigration laws a function traditionally, and arguably constitutionally, reserved to Congress -- namely, defining the overall numerical limitations on legal immigration. Numerical limitations on family reunification preference immigration have always been amended by affirmative acts of Congress. Congress has never utilized a mechanism whereby an immigration issue of such fundamental importance -- the total number of persons who may emigrate to America -- could be determined without the input of even one legislator elected to Congress. The President's certification, coupled with the joint resolution "veto" mechanism, is more than a simple recommendation. It raises the real possibility that Congress will not give full, or perhaps any consideration to the issue. At best, Congress will have insufficient time to act, even if only to prohibit the recommendations from taking effect. At worst, Congress may legislate controversial change through inaction at a time when it is not politically expedient or possible to affect changes in the immigration laws through affirmative legislative action.

Rather than have recommendations coming from the enforcement arm of the government, an alternative would be to use the mechanism recommended by the Select Commission On Immigration and Refugee Policy for monitoring immigration. The Commission proposed that ranking members of the House and Senate subcommittees with immigration responsibilities, in consultation with the Departments of State, Justice, and Labor, prepare an annual report on the current domestic and international situations as they relate to U.S. immigration policy. A second alternative would be to constitute an independent commission to study and recommend changes to numerical limitations. The recommendations would be sent to Congress for consideration, and could be enacted only through affirmative legislation. The commission could be composed of fifteen members. The President could appoint the Chairman of the commission and four other members. The President of the Senate could appoint five members of the commission, and the Speaker of the House the remaining five. Not more than three members appointed by President, the President of the Senate or the Speaker of the House would be members of the same political party. An identical entity was created by Congress in 1965 to recommend numerical limitations on immigration from the Western Hemisphere. See Immigration Act of 1965, 79 Stat. 911, at 920.

2. FAMILY REUNIFICATION MUST REMAIN A PARAMOUNT GOAL OF IMMIGRATION LAW. ELIGIBILITY REQUIREMENTS FOR FAMILY REUNIFICATION MUST NOT BE NARROWED.

The Kennedy bill redefines for immigration purposes the concept of the nuclear family, and in so doing, undermines a sound historical foundation of American immigration law and policy, family reunification. The present family reunification classifications should not be altered. In excluding from second preference eligibility unmarried children of permanent resident aliens over the age of twenty-one, and from fifth preference eligibility married brothers and sisters of U.S. citizens, the bill disproportionately restricts the eligibility of Asian immigrants, who use the preferences more than any other group, and whose culture and traditional values certainly include within the immediate family all children regardless of age, and all brothers and sisters regardless of marital status.

These provisions of the bill are inconsistent with the specific recommendations of the Select Commission on Immigration and Refugee Policy, which recognized and reaffirmed the policy goal of family reunification and the preservation of the current preference system. More specifically, the Select Commission "recommend(ed) that the present policy of admitting all brothers and sisters of adult U.S. citizens within the numerical limitations be continued." The Select Commission also underscored the importance of reunifying all unmarried sons and daughters of permanent resident aliens, regardless of the age of the sons and daughters.

3. THE NUMBER OF FIFTH PREFERENCE VISAS SHOULD NOT BE REDUCED. THE COMMITTEE SHOULD ADOPT THE RECOMMENDATION OF THE SELECT COMMISSION THAT THERE BE AN ANNUAL CEILING OF 350,000 NUMERICALLY LIMITED IMMIGRANT VISAS WITH AN ADDITIONAL 100,000 VISAS AVAILABLE ANNUALLY FOR THE FIRST FIVE YEARS TO PROVIDE A HIGHER CEILING TO ALLOW BACKLOGS TO CLEAR.

S. 1611 would reduce by two-thirds (from 64,800 to 21,600) the number of fifth preference immigration visas made available each year, and double the number of second preference visas made available (from 70,200 to 140,400). Although the overall level of family reunification immigration shall remain the same under the Kennedy bill as under current law, the modification of percentage allotments between individual preferences, although facially neutral, disparately impacts applicants from Asian nations. Eligible applicants from Asian nations and Mexico dominate the fifth preference backlog. According to the Department of State Visa Bulletin for October, 1987, Hong Kong (2/75), Philippines (5/76), Mexico (11/76), Korea (12/80), India (8/81), and China (12/80), have the largest backlogs under the fifth preference, and would be most severely affected by a two-thirds reduction in number of fifth preference visas issued each year. Even accounting for the narrowed eligibility requirements, the effect of the quantitative reduction in the fifth preference will be a such a drastic increase in the backlog of applicants as to amount to a de facto exclusion under the fifth preference.

4. THE NON-PREFERENCE POINT SYSTEM RESURRECTS THE RACIAL AND ETHNIC DISCRIMINATION OF THE DISCARDED NATIONAL ORIGINS SYSTEM BY FAVORING DISPROPORTIONATELY ALIENS COMING FROM WESTERN EUROPE AND OTHER NATIONS THAT RECEIVED FAVORABLE TREATMENT PRIOR TO THE IMMIGRATION ACT OF 1965.

The Kennedy bill establishes a new non-preference category that would be allocated 50,000 visas per year. Applicants would be selected on a point system. In order to be included in the pool from which the 50,000 are chosen, an alien must be accorded seventy points. Points are awarded for twelve criteria based upon national origin (+30 if from Western Europe), English speaking and reading ability (+10), age (+10 if between 18 and 40 yrs., -2 for each year over 40), arranged employment (+20), vocational training (+10), high school degree (+12), college degree (+10), graduate degree (+5), needed skills (+20), work experience in needed skill (+10), and married brothers and sisters of American citizens (+10).

Thirty points are awarded to "aliens coming from any country adversely affected by the enactment of Public Law 89-236", the Immigration Act of 1965. The countries "adversely affected" by the 1965 Act are for the most part from Western Europe. This provision reintroduces an element of national origin discrimination into American immigration law. The use of racially discriminatory criteria in any form or degree is offensive. The fact that the Constitution does not proscribe such legislative judgments in the field of immigration does not make it any less distasteful. The racist national origins system was wisely discarded by passage of the Immigration Act of 1965, and should not be resurrected in any form.

AALDEF also finds offensive the awarding of additional points for English speaking and reading ability. This clearly disadvantages non-English speaking nations, and will be perceived as having racial overtones.

III. CONCLUSION

The Immigration Act of 1965 was remedial legislation enacted purposefully to end discriminatory quotas and to extend the family reunification policy of the law to Asians who had been historically restricted and excluded from these shores. The Select Commission on Immigration and Refugee Policy reaffirmed this policy direction by explicitly recommending preservation of the family preference system, specifically the fifth and second preferences without qualitative or quantitative modifications as suggested by S-1611. Proposals to expand non-preferences categories for immigrant groups who have lost closer family ties are welcomed; however, they need not be accompanied by restrictions upon the eligibility for the second and fifth preferences or a numerical reduction in the fifth preference. The mechanism for amending numerical limitations on family and independent (non-family) immigration dangerously reduces the active and direct participation of the legislature in formulating a critical element of national immigration policy, and would allow the Executive, in the face of Congressional inaction, to drastically reduce immigration based on family reunification, the primary source of immigration from Asia, while increasing non-family immigration. Finally, the proposed non-preference point system resurrects elements of a century of discriminatory immigration policy, a chapter of our history only recently closed, and one that must never be revived.

TESTIMONY

On Reform of the Legal Immigration System

Prepared for the Sub-Committee on Immigration and Refugee Affairs
Committee on the Judiciary
United States Senate

December 11, 1987

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I-Introduction

Our nation is currently experiencing dramatic shifts in demographic behavior. We are living longer than ever; we are having fewer babies than ever; we are accepting perhaps more immigrants than ever. Together these shifts are having considerable impact on the size and composition of the population of the future.

Legal immigration has increased since 1965. Today some 600,000 to 700,000 legal immigrants enter every year. About 270,000 come under the preference system, but the proportion qualifying as immediate family relatives of citizens is growing. Such growth should continue in future years. A significant share of the persons who came in the 1970s are now citizens and petitioning for the entrance of close relatives. To that we must add those entering as a result of the the amnesty provisions of the 1986 legislation. Of the projected 2 million persons amnestied, a majority will undoubtedly opt for citizenship opening the door for additional entries. Legal immigration could easily surpass 900,000 per year by the mid-1990s. To that we should add an untold number of illegal entries that will occur despite the 1986 legislation. Finally, we must set aside at least 50,000 slots for refugees.

United States fertility has been at an all-time low for the past 16 years. Americans are simply not replacing themselves. Some have argued that high levels of immigration are needed to balance the low fertility.

Given a continuation of the current low fertility that is causing some Americans to fear imminent population decline, what are the demographic facts about the future? Assuming constant fertility and mortality at present low levels and assuming net immigration of only 560,000 per year, demographer Thomas Espenshade finds that the population would peak at 281 million in 2025. A century from now the US would have a population of 258 million --- 14 million more than it has today. (1)

Demographer Cary Davis and I have built in trend lines of fertility for each US racial group and projected population according to different net immigration assumptions. At 500,000 per year---less than the current intake of legal immigration alone---the US in 2080 would still have 33 million people more than in 1980. At one million per year --a plausible assumption in light of current world population growth---the US would have 340 million in 2080. (2)

What would be the population consequences if campaigns to raise fertility were to succeed? If fertility were to rise to just 2.2--or just above the replacement level--and if immigration were to approximate 700,000 per year, a population of over half a billion Americans is conceivable in less than a century.

As for population decline, there is little evidence that we can expect it over the next century. Instead, the signs point to more Americans than ever. There is little justification for the current lamentations by some Americans over our so-called "baby dearth." There are many reasons for continuing immigration at some level but the fear of population decline over the next century is not one of them.

However, the combination of very low fertility and high levels of immigration poses another dilemma for the nation: the increasing heterogeneity of the population.

II-Immigration and Diversity

Without intermarriage the resident population will eventually disappear (after many centuries) and be replaced by the descendants of the post-1987 immigrants. But we are not particularly concerned with the year 3000; we are concerned about the 21st century. Can the nation cope with the massive increases in immigration from Asia and Latin America and the shifts in demographic behavior that will mean a marked reduction in the majority's proportion of the population? Indeed within 30 years, racial majorities will no longer exist in California, New York and Texas where some 30 percent of the American people reside. The nation will witness the gradual emergence of five racial minorities: Asian, Latin, Black, Native-American, and European.

Let me be very clear about one thing: There is absolutely nothing wrong with a racially diverse society; indeed, I look forward to it. However, the challenge is not how to avoid such a shift from taking place, the challenge is to accept the shift while making certain that American culture is not diluted to the point of being unrecognizeable. Both, the new immigrants and the host population must work diligently to assure the complete integration of these new residents into American society.

III-Past Cultural Adaptation

With immigration rising to perhaps alltime highs, many Americans are asking if the country has a right to expect the newcomers to be assimilated into its culture, or should they encourage a new cultural pluralism where each group might maintain its ethnic heritage and identity. The questions are not new.

Whenever a new group comes into an area, it, as well as the host group, must adapt to a new situation. The modes of adaptation can vary all the way from cultural separatism, where the immigrant group remains isolated from the majority either through its own volition or through segregationist practices on the part of the host group, to total assimilation, where a subordinate group takes on the characteristics of the dominant group and is eventually accepted as part of that group.

Between these two adaptation extremes come cultural pluralism, where the society "consciously allows and encourages its ethnic groups to develop, each emphasizing its particular cultural heritage," and the "melting pot" where host and immigrant groups share each other's cultures and in the process form a new creation. (3)

At the turn of the 20th century the Anglo-Celtic majority clearly favored the total assimilation of the new groups into an Anglo-dominated society. Cultural pluralism and even the melting pot were strongly opposed. Anthropologist Madison Grant stated: "If the Melting Pot is allowed to boil without control, the type of native American of colonial descent will become as extinct as the Athenian in the Age of Pericles."(4) Theodore Roosevelt felt nothing but disdain for the hyphenated American and Woodrow Wilson declared that: "Any man who thinks of himself as belonging to a particular national group in America has not yet become an

American." (5)

As we look back over the past century and try to assess how the cultural adaptation process among persons of European ancestry developed, it is clear that total assimilation didn't work. Most groups have retained some semblance of ethnicity over the years. Neither has cultural pluralism been successful. Separate customs, language and culture may linger among certain European groups, but this is limited to the home and church, and even there it is rapidly disappearing.

By the 1980s the often maligned melting pot has worked quite well for the immigrants from southern and eastern Europe. In addition to different groups acting increasingly alike, it may well be that a new population is in the process of forming. Sociologist Stanley Lieberson calls them the "unhyphenated Americans."(6)

It is important to point out that it has taken some 2 or 3 generations for the "pot to boil." Following the drastic reductions in immigration after 1920, the second and third generations had the opportunity to gradually melt into the greater society. Without the burden of thousands of additional immigrants of the same ethnic background, it was easier for the earlier arrivers to move up the social and economic ladder.

"Sizeable numbers of newcomers raise the level of racial consciousness on the part of others. Moreover, if these newcomers are less able to compete for more desireable positions than are the longer standing residents, they will tend to undercut the position of other members of the group. This is because the older residents and those of higher socioeconomic status cannot totally avoid the newcomers. Hence, there is some deterioration in the quality of residential areas, schools, and the like for those earlier residents who might otherwise enjoy more fully the rewards of their mobility. Beyond this, from the point of view of the dominant outsiders, the newcomers may reinforce stereotypes and negative dispositions that affect all members of the group." (7)

Furthermore, the melting pot succeeded only because of the high incidence of interethnic marriage that has taken place over the past few decades. For example, "...of Italians marrying recently, generally 2/3 to 3/4 have intermarried...Only about 20 percent of men born since 1950 have chosen wives with all Italian parentage, while another 10 to 15 percent have chosen wives with part-Italian ancestry." Sociologist Richard Alba concludes: "Italian-Americans are on the verge of the twilight of their ethnicity. 'Twilight' appears an accurate metaphor for a stage when ethnic differences will remain visible but only faintly so....At the same time, it also captures the reality that ethnicity, at least among whites, seems to be steadily receding."(8)

As a result, the concept of "American" has changed significantly. This is an ongoing exercise with us. "We are a nation constantly in the process of redefining ourselves."(9) Perhaps as recently as 1960, American was associated with Anglo-Celtic. Ethnic Europeans were still in the process of becoming American; Americans of other races were kept culturally separated from the mainstream.

With the passing of time; with increased intermarriage; with the passage of both the Civil Rights Act of 1964 and the Immigration legislation of 1965, major changes began to take place to the population of European ancestry. The 1960 presidential election brought the first Catholic president, a third generation Irishman. The 1968 election saw both major parties offer vice-presidential candidates who were second-generation Americans. The coming 1988 election is even more illustrative of the changes that have taken place. Among those mentioned for the presidency are second and third generation Italians, Greeks, and Basques. The important thing is that it doesn't matter. Who is to say that Michael Dukakis is not as American as George Bush?

If the reply of President Herbert Hoover to a mild letter of criticism from New York city Mayor Fiorello LaGuardia is an example, one doubts if such a question could have been asked in 1930: "It seems to me, a Republican, that you are a little out of your class, in presuming to criticize the President. It strikes me as impudence. You should go back to where you belong and advise Mussolini on how to make good honest citizens in Italy. The Italians are predominantly our murderers and bootleggers...Like a lot of other foreign spawn, you do not appreciate this country which supports you and tolerates you."(10)

IV-Future Cultural Adaptation

We have come a long way, within the majority population of European ancestry, over the past few decades. Now we must ask:

what about the future? What about the newest non-European immigrants? What kind of cultural adaptation will be appropriate for them and for the nation given that, because of low fertility and continued high levels of immigration, the proportion of these newest Americans will increase rapidly?

Total assimilation of the minority groups into the mainstream American culture is not a realistic goal. Soon there will be no majority into which to assimilate! The racial and ethnic identity consciousness that has emerged from the Civil Rights and immigration legislation of the 1960s and the growth of large enclaves of new immigrants in certain parts of the country precludes any substantive assimilation into the European-oriented dominant culture of the nation. Furthermore, there is considerable doubt as to whether the newer groups desire total assimilation and even whether the current majority favors it.

Hopefully cultural separatism is a thing of the past and out of the question for the future. Yet, there are those who would favor such a process. Certain Hispanic irredentists dream of a new Spanish-speaking southwest as a way to take back, demographically, what the United States stole, militarily some 140 years ago. And there are always a few segregationists who would dearly love to keep all the races separate and "in their places." There is little chance of these groups attaining their goals.

The "melting pot" is an idealistic though unrealistic goal for the foreseeable future. Here we are talking about different races and not different ethnic groups within one race. Recall too that this process cannot work without considerable intermarriage. While interracial marriages are on the increase, the possibility of attaining what Philip Wylie once called a "tea-colored" society is hardly within our reach (11).

Cultural pluralism is much in vogue these days. It is seen by some as an antidote to the perceived false and even bigoted ideals of the melting pot.(12) Sociologists Alejandro Portes and Robert Bach have described what they call ethnic enclaves where, at least in theory, one does not even have to master English. But they deal only with the immigrant generation.(13) Can true cultural pluralism be maintained over the generations, in light of the powerful influence of the mainstream American culture? More pertinent, should true cultural pluralism be maintained in a society gradually becoming more demographically-pluralistic? "We should still engage in the work of the creation of a single, distinct, and unique nation, and this requires that our main attention be centered on the common culture." (14) If cultural pluralism was but a supplement to these emerging common interests and ideals, it would be totally appropriate. However, cultural pluralism, as presently conceived, argues for the primacy of the homeland language and culture.

Where does that leave us? Given the demographic picture and the new awareness of identity, finding a suitable mode of cultural adaptation is difficult.

The United States is pluralistic in race, ethnicity and religion. Yet it constantly strives for the maintainance of a single though dynamic culture and it has resisted total cultural pluralism. The quest for unity through diversity continues and as historian John Higham puts it, "The essential dilemma is the opposition between a strategy of integration and one of pluralism...The integrationist looks toward the elimination of ethnic boundaries. The pluralist believes in maintaining them." (15)

As the nation gradually becomes multi-racial, it is particularly important that a form of cultural adaptation be accepted that takes the best of cultural pluralism and assimilation while at the same time maintaining the American culture and assuring its acceptance by all. Some kind of pluralistic integration may be a good compromise.

Integration of all groups is at the heart of this process. This does not imply assimilation. Rather, all groups have equal access to the mechanism for success in the society. Yet, the groups may, if they so desire, remain identifiable.

An analogy may help explain pluralistic integration. For many decades, most white Americans lived under an Anglo-conformity umbrella. While minorities, such as Blacks, Hispanics, and Asians were kept "out in rain" so to speak, European Americans tried to conform to Anglo norms. Gradually, non-Anglo Whites gained acceptance and began sharing the holding of the umbrella. What had been an Anglo-conformity umbrella had become a white American umbrella. In the meantime, the minority populations increased and demands for equal rights were vociferous. But there was no more room under the umbrella. A tent became necessary. Here all groups could stay out of the rain and participate equally in the social system. While the center pole of the tent may be white American, the tent can only stand if it is properly attached to the ground at each corner. These ties are provided by the various racial groups: Asian, Black, Hispanic, Native-American, that comprise the United States as we will know it at the turn of the 21st century.

What will America "look like" in 50 years; in 100 years? Should some form of pluralistic integration succeed, we will have a vastly different America in 2087 than in 1987. Indeed the change will be even greater than that noted between 1887 and 1987. If we can look back on that century, we can predict that the cultural adaptation process will not be an easy one. The difficulties surrounding the adaptation of ethnic minorities within the white population will appear minor when compared to the those involving the adaptation of races rather than ethnic groups.

Yet, the society should survive though it will clearly need continued redefinition as the years go by. "Twilight may be descending on the ethnic groups of European heritage, but ethnicity itself is not subsiding as an issue for American society. In the future, the salient ethnic outlines may stem from non-European origins, just as those of European-origins have been prominent in the past."(16)

V-The Maintenance of National Unity

Irrespective of the mode of cultural adaptation that is followed, be it pluralistic integration or some new as yet unidentified form, it is imperative that the nation maintain its identity.

For the nation to survive it must possess a dynamic culture that includes certain basic values and beliefs and a common language through which all the residents can communicate.

To say the culture must be dynamic is to say that it must be constantly adapting not only to new ideas but to new people as well. The contributions of earlier immigrants are wellknown; there is no reason to doubt that future immigrants will also add to the nation's culture

To say that a common language must be maintained is to say that English is necessary to keep the culture intact. This is not to deny the rights of various groups to encourage the use of their respective languages in the home. Indeed, in an increasingly interdependent world, all Americans should be able to communicate in at least two languages. Nevertheless, English is the "glue" that helps keep American culture vibrant and dynamic.

Americans cherish the basic values and ideals that emanate from the founding fathers. However, this does not suggest a devotion to anything and everything Anglo-Saxon. Since its birth the US has been struggling to define some coherent relationship between the ideals of the Founding Fathers, who called for a nation based on principles rather than on race or ethnicity, and the realities of a nation in which one major racial and ethnic stock, the original white settlers, dominated while minorities faced discrimination, prejudice and inequality. The Civil Rights Act of 1964 and the Immigration legislation of 1965 determined once and for all that the founding principles should prevail over any lingering attachment to the Anglo-Saxon founders of the republic.(17))

We can take the very best of our founding fathers' ideas and we can build on them in the process of improving our dynamic culture. For all its faults American culture is worth preserving. The ideal of equal opportunity for all; the total committment to a democratic order and to individual freedom; the Constitution whose 200th birthday we are celebrating this year --- these concepts must be preserved.

In looking at the future, it is clear that America's ethnic and racial diversity will increase. This future diversity can also lead to a better society, but the coming of a truly multiracial society where no single group predominates numerically will not be without challenges for a society whose roots are still overwhelmingly European. I would suggest that the following steps be taken to ease the transition to a multi-racial society.

First, these racial and ethnic changes should not be allowed to occur too rapidly. The turbulence that would ensue could easily lead to a dangerous backlash by the majority. A repetition of the hostilities that accompanied immigration at the turn of the 20th century should be avoided at all cost. While the blatantly discriminatory Quota laws of the 1920s, which substantially reduced immigration from southern and eastern Europe, are a source of embarrassment, ironically they performed a useful function. Limiting immigration made it easier for the newest immigrants to adapt to their new society; limiting immigration made it possible for the melting pot to eventually succeed. So too is it important that future levels of immigration be limited so as to avoid the emergence of permanent racial and ethnic enclaves and so as to ease the adaptation process of the newest Americans into a pluralistically integrated society.

Illegal immigration must be ended as soon as possible. The nation can ill afford to perpetuate within its midst a poverty ridden subgroup without any rights in law here solely to minimize the labor costs of growers and sweatshop operators. Legal immigration should be limited to no more than half a million a year, including refugees and immediate relatives. Given that between one quarter and one-third of all immigrants are likely to return eventually to their native land, this would result in net immigration of between 350,000 and 400,000 per year.(18) Some thought should also be given to eliminating country quotas and opening the process to the world so as to achieve greater diversity; another objective might be to examine more closely our future labor needs and increase the proportion of slots for scarce skilled labor while reducing those for family reunification.

Second, we must cease using immigration as a means to keep labor costs down while at the same time postponing the development of technological innovations that would lead to the hiring of fewer but better skilled workers. This was the case in the late 1800s when millions of immigrants were welcomed by the captains of industry to replace the native-born skilled artisans at lower wages, and to assure that Blacks remained serfs on southern plantations. The process has been repeated in recent years with the encouragement of illegal immigration by certain agricultural and industrial interest groups, again to keep wages down and to postpone the need for technological innovations, particularly in agriculture. (19)

If immigration is reduced and if priority is given to the nation's needs in selecting immigrants, attention will necessarily focus on innovative means to make production more efficient and on ways to better utilize our own minorities who together with women and immigrants will constitute 80 percent of the labor force entrants for the remainder of this century. (20)

For historical and institutional reasons, members of these groups have usually had difficulty securing the necessary job preparation and receiving fair opportunities to compete for the available jobs. Hence, our qualitative human resource policies--such as education, training, retraining, labor information, and labor mobility programs-- must become integral components of national economic policy. (21)

We must try to avoid a two-tier economy based solely on race. A two-tier economy where most jobs are either high level technically or professionally, or low level in various types of services may be unavoidable, but it would be tragic if it became racially segregated with Asians and Whites at the top and Blacks and Latins at the bottom. In the future society, access to quality education must be made available to all without any question and all American youth must be encouraged to succeed.

Third, we should cease thinking of the newest immigrants as "they" while we are the "we's." The newcomers should be accepted as fellow Americans. All of us are part of an increasingly interdependent world. In this rapidly changing world where communications are instant, people are not the only international migrants; so too are ideas. In such a world, immigrants may be vastly different from those of 100 years ago. Every effort must be made to encourage the newest residents to participate fully and equally in this dynamic society.

Fourth, as the nation welcomes its newest Americans, in turn the newcomers must demonstrate their desire to join in this exciting experiment. In 21st century America, considerable diversity will be welcomed; cultural separatism, whether forced or self-inflicted, will not. The newest residents should be encouraged to naturalize, but not solely for economic reasons. "The better life in America is made up not only of economic freedom, but also of personal freedom, including political and religious freedom and the right to be different if one chooses." (22)

VII-Conclusion

At the outset two questions were brought up that trouble some Americans- population decline and population diversity. Worth restressing is that all demographic variables must be examined when considering future population changes. Advocates of much lower immigration who also favor population stability must be aware that some immigration is needed to compensate for the low fertility of Americans. Those fearful of the effects of low fertility should look to immigration for reassurance. The nation is not about to lose population, certainly not for the next century at least.

Insofar as immigration is concerned, we have seen the melding of numerous European groups into the mainstream society; a society that is no longer Anglo dominated but is pure and simple American. We have seen second-generation citizens of Italian, Polish, Greek and countless other origins reach the highest pinacles of the political and business world.

Now we are faced with melding various racial groups into the American society. We propose that this will not be a form of cultural pluralism or assimilation. Rather, we see a kind of pluralistic integration emerging in the 21st century. The racial groups will maintain their identity if they so desire but increasingly there will be a greater acceptance of basic American norms as these minorities - be they Black, Asian, Hispanic, Native American or White - emerge as the American society of the 21st century.

A 1986 survey of prospective immigrants from Korea and the Philippines sponsored by the East-West Center's Population Institute yields interesting information about the backgrounds and goals of these people. Persons who had just received their permanent visas were interviewed in Manila and Seoul. A few summary findings follow:

* More than three-quarters of Filipinos and Koreans had more than a high school education and close to one-third had completed college..

* Both groups exhibited optimism about their coming American experience. Koreans, however, felt that they would encounteer some prejudice.

* Most Filipinos speak English fairly well; this is not true of Koreans. However, over 30 percent of the Koreans expressed a desire to take language training after arrival in the United States.

* Three-quarters of the Filipinos and 63 percent of the Korean plan to become citizens and less than one-third of each group plan to return permanently to their motherland.

* Over 60 percent of the Koreans hope to eventually start their own businesses. On average, each Korean will arrive with over $10,000.

These and other findings from this survey suggest that immigrants from these two countries will eventually fit into American society and contribute to its dynamic culture.

The path toward pluralistic integration will nevertheless be strewn with obstacles. After all, the path to the melting pot among white ethnic groups was not exactly a bed of roses. Let us be honest: because different races are involved, the path will be rougher. But we have a lot going for us as well. Indeed, we are doubly blessed. First, we can rest easy under what demographer Peter Morrison has labelled the "protective mantle of natural increase" left by our prolonged baby boom which assures continued population growth for many decades; and second, we can be secure in the knowledge that we are the preferred destination of millions of hopeful would-be migrants.(23)

By applying rational immigration policies, we can select the proper number of immigrants to balance our low fertility while enriching our economy and culture. Our challenge then is the careful selection and adaptation of culturally diverse newcomers that will enhance American social and economic life.

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In this report, the "melting pot" differs from assimilation. Many scholars treat them synonymously. I am indepted to Dr. Robert Gardner for the "water glass analogy" that best explains the difference between melting pot and assimilation. The water glass represents the original host society. Adding sugar to it will not change its appearance though the taste will be affected. That represents total assimilation. Adding cola will create a new mix and change the appearance as well as the taste. That represents the melting pot. To continue the analogy, adding oil to the water will result in separate entitiers as the oil does not mix with the water. That represents cultural pluralism. Finally, if the sugar, cola and oil are kept out of the water glass, we have cultural separatism.

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Irish Immigration Reform Movement

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STATEMENT OF

THE IRISH IMMIGRATION REFORM MOVEMENT

(IIRM)

HEARING BEFORE THE
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

OCTOBER 23, 1987

The Irish Immigration Reform Movement first wishes to express the strongest possible support for S. 1611, and to thank the Chairman for his courageous leadership in proposing legislative reform critical to the national interest and to the mandate for a more just and equitable immigration policy. We recognize and strongly support the humanitarian principle of family reunification, and S. 1611 respects that principle, in accordance with the recommendations of the Select Commission on Immigration and Refugee Policy. However our current immigration system, which reserves a full 80% of visas granted annually for those fortunate enough to claim immediate relatives in the United States, amounts, in practice, to a national origins system which increasingly restricts access to this country to those nations which have seen significant waves of legal immigration in the past twenty two years following passage of the 1965 Immigration and Nationality Act. Immediate family members, with the exception of spouses, necessarily share national origin, and so benefits for some nations increase geometrically as new immigrants in turn earn petition rights for their relatives, while the aspiring immigrant from Ireland, Poland, or Italy without close relatives is ineligible even to apply for 80% of visas under the 1965 preference categories.

The Irish Immigration Reform Movement seeks to ease this injustice without adversely affecting the important gains made by other nationalitie following the reforms of 1965. By introducing a separate category for independent immigrants, S. 1611 takes a first and vital step towards accomplishing this goal. The independent immigrant, willing to rip up roots to seek a future in a land where he or she hasno immediate family but only the hope of a better life, embodies the spirit of America celebrated during last year's anniversary of the Statue of Liberty. At a time when the U.S. Department of Labor predicts increasing shortages of skilled workers and the United States as a whole is struggling to maintain its advantage in an increasingly competitive global market, the resourcefullness and drive of the skilled independent immigrant should be sought out, not summarily excluded.

The Point System

The first objective of the proposed point system, similiar to those used successfully in Canada and Australia, is to grant opportunity to those immigrants whose age, vocational preparation, education, and language skills best ennable them to fill immediate and projected U.S. labor needs. This objective is essential to the national interest:

** Labor Department analysis of the United States labor force in the year 2,000 indicate a continuation of the recent rapid rate of job creation in the services sector, particularly in the more highly skilled category. Yet the growth of the population and labor force will be considerably slower. To avert a critical shortage, the United States must either begin costly, time-consuming retraining programs or combine this effort with a timely, profitable influx of skilled, tax-paying immigrants, pre-screened to insure that their abilities are tailor made to U.S. needs. The point system rewarding applicants for education, vocational training and language skills encourages the aspiring immigrant to prepare for life in America before arrival, for their own benefit and protection as well as that of the U.S.

** Christopher G. Hankin, Acting Deputy Undersecretary of the International Labor Affairs Bureau, U.S. Department of Labor, anticipates that the new immigrants legalized under IRCA 1986 are concentrated primarily in lower skill occupations, and thus will not ease the immediate and projected shortage of more highly skilled workers.

** The Bureau of the Census, Current Population Reports, Projections of the Population of the United States by Age, Sex, and Race, 1983 to 2080, indicate severe intergenerational imbalances as the "baby boom" generation, the largest in our history, reaches retirement age. This indicates a looming crisis in U.S. social security payments and health care for the elderly. Analysis of census reports by many experts indicate that whereas today about five working Americans are available to support each retiree, after the year 2,000 to ratio will be closer to two to one. The most feasible and cost effective opportunity for averting this crisis is an increase in the number of skilled, tax-paying immigrants between the ages of eighteen to forty.

The Irish Immigration Reform Movement is grateful to the Chairman an the Subcommittee for this opportunity to point out how fortuitously the needs of the labor market mesh with the abilities and critical current generation of aspiring immigrants from Ireland. Ireland todat is still reeling under a devastating economic recession that has resulted in an unemployment rate of 20% of the general workforce and over 30% among its young population. This figure would certainly be higher but for a wave of emigration that will see an estimated 30,000 people leave Ireland this year and a projected 250,000, a full 7 percent of the population, by 1992. As in the times of famine and oppression, Ireland's tragedy offers immediate opportunity and benefits to the U.S. Deprived of a future in their own country, young Irish men and women are nonetheless the benefitors of a superb educational and vocational preparation system hailed as one of the very finest in Europe. Their preparation is particularly outstanding in those areas where Secretary of Labor WIlliam Brock has predicted the most critical shortages: teachers, nurses, the skilled and semi-skilled repair categories, child care, and the services sector. The motivation and work ethic of the Irish immigrant is beyond question, as was cited in an editorial by John A. Barnes in the Wall Street Journal of September 30, 1987:

> "Ireland has a complete welfare state that provides generous unemployment and welfare benefits along with free medical care and subsidized housing. The lure of plentiful work in the U.S. is so strong, however, that Irish immigrants are are willing to leave all that behind and risk defying not only the immigration laws but the ;far more immediate hazards of American urban life such as crime, low vacancy rates and high medical bills."

Yet, the bias in our immigration system against the independent immigrant insures that today it is England and mainland Europe that is best able to "skim the cream" of Ireland's best and brightest, who know that the future of an illegal alien in the U.S. is no future at all. The highly publicized employer sanctions of IRCA are greatly exacerbating this loss of human capitol, unless and until the law is amended.

The second objective of S. 1611's proposed point system is to re-open America to those nations - Ireland, Poland, Italy, and others - whose people have long dedicated their lives and labor to the building of the U.S. from its earliest days. Without the historic contribution of these countries, in peace and at war, there would be no United States of America to immigrate to. The reforms of 1965 rightfully and successfully eased discrimination against some nationalities, but had an unintentionally devastating impact on others. The 150,000 Irish nationals and estimated 90,000 Poles forced to live in the shadows as illegal aliens are tragic testimony to the adverse effect of the 1965 Act on these nations. Last year's one-time NP-5 visa program, which saw over a million written applications for a mere 10,000 visas, is further, undeniable proof of imbalances which inadvertently arose following 1965. Is it just that the descendants of those who have given so much to America's past should be denied a place in her future?

In the case of the Irish contribution, the histories of Ireland and America are so long interwoven that it is not possible to write the history of one without consideration of the other. The Irish sought to escape injustice and oppression and to contribute to the vitality of this country in government, the arts, business, the military, and education. Their experience and triumph over the discrimination symbolized by the "No Irish Need Apply" signs of old paved the way for other immigrant groups that followed. Seventeen U.S. presidents have been of Irish extraction, three the sons of immigrants, and Eamon de Valera, President of Ireland from 1959 to 1973, was in fact born in New York City. In the Republic of Ireland any American with an Irish born grandparent is entitled to an Irish passport, and even the national anthem expresses gratitude and welcome to those who have come "from a land beyond the wave." For 44 million Irish Americans, their heritage is not an obscure genealogical fact but a treasured part of their identity which they wish ardently to preserve. 257 Irish born Americans have won the Congressional Medal of Honor for valor in war time, more than twice that claimed ,by any other nationality. Yet the imbalances of the 1965 Act have resulted in documented cases of the children and grandchildren of U.S. war veterans and medal of honor winners denied entry into the U.S. except as illegal aliens. Is this just, or even honorable?

Re-opening America to the thirty-six adversely affected countries is not only a matter of simple justice. Excluding out traditional cultural, political and military allies fosters alienation from the U.S. political system abroad. Furthermore, there is an additional threat within our own borders. We welcome and seek the broadening of America's rich ethnic diversity, but too rapid demographic change, caused not by the inclusion of new groups by by the needless exclusion of the old, threatens social cohesion and the well-being and security of all persons residing in the U.S. Rapid upheaval and change, when coupled with the adverse effects of the 1965 Act on the 36 countries, fuels social tension and strains the ability of the general population to transcend ethnic and generation boundaries to work together as one. The victims of this tension are usually the poorest, most disadvantaged sectors of our population. The skilled, highly motivated immigrant is not job competition but a job creator. Furthermore, when native-born Americans see the lands of their forefathers more justly represented in today's immigrant pool, they are reminded that we are indeed "a nation of immigrants," and good will towards all new arrivals to this country is encouraged. The very virtues that attract immigrants to our shores from the world over - our democratic system, economic freedom of opportunity, our gener[illegible], social welfare provisions - are inherently fragile and require cooperation and cohesion here at home.

The Effect of S. 1611 on Existing Preference Categories

The IIRM endorses or does not oppose many of the proposed amendments to the current preference system. However, we ask that the Subcommittee and Chairman . consider the following proposed modifications:

** A maximum waiting period be introduced for spouses and unmarried children of residents. applying under the second preference.

** The definitions of independent immigrants eligible to apply for third and sixth preference visa categories remain as they currently stand.

* The current 27,000 visa limitation for skilled workers should only apply to the current independent immigrant preference categories. It should not be applied to the proposed total of 50,000 additional, nonpreference visas.

The Second Preference Category

The desire to reduce the tremendous backlog that has built up in the second preference category, especially for natives of countries such as Mexico, China, Korea, and the Philippines, is very welcome. We further recommend that in order to reduce the backlog in the second preference for spouses and unmarried children of residents, a maximum waiting period be introduced. Once a specified waiting period of three years has elapsed, the child or spouse of a resident would automatically qualify for immediate permanent residence.

Independent Preference Adjustments

The existing third and sixth preference categories are the only two open to the independent immigrant under the current system. Each undergoes alterations in S, 1611.

Under the alteration proposed by S. 1611, the third preference would become applicable only to "aliens who are members of the professions holding doctoral degrees or aliens of exceptional ability." This modification would force holders of all degrees below the doctoral level to apply for admission under the already over-burdened sixth preference category. This will create further backlogs in that category and increase competition for the newly created independent category.

We feel that this more narrow definition of the first independent category does not serve the needs of the country at this time.

-- The needs of employers and the labor market as a whole are changing at an ever-increasing rate. The young immigrant with a bachelor or master's degree is best able to adapt to these changes by tailoring his or her higher educational and professional preparation to the needs of the U.S. economy.

-- Restricting admission to members of the professions holding doctoral degrees or the equivalent would force certain professionals in short supply, such as nurses and teachers, to apply under the already overburdened sixth preference category, thus creating further backlogs. Secretary of Labor William Brock recently stated that in the immediate future the U.S. will need a million extra teachers, and 100,000 nurses.

The IIRM therefore recommends that the definition of the third preference category remain as it currently stands.

Under S. 1611, the sixth preference category would be limited to skilled workers, and would eliminate from eligibility the unskilled worker with an offer of permanent employment. Again, we suggest further study to ascertain if this change would truly suit the needs of the labor market.

- -- A study by the National Restaurant Association reports that its members "could experience a shortfall of one million workers by 1995. Another report, from the National Retail Merchants Association, states, "Youth shortages are impacting the retail business more than many other businesses." There is a real and growing need for dedicated unskilled workers with good basic skills, particularly in the labor-intensive service industries. The rigors of the labor certification process insure that the unskilled worker qualifying under ;the sixth preference is of exceptional value to his or her employer.
- -- The new independent catego;ry to be created by S. 1611 is also heavily weighted towards the skilled, educated person, and we do not believe the motivated unskilled worker should be shut out entirely.

We therefore urge that the definition of the sixth preference category remain as it currently stands.

Eligibility of skilled workers

Section 203(b)(2 declares that skilled workers shall be allocated in any fiscal year not more than 27,000 visas. The text of the subsection does not confine the 27,000 limitation to this third preference category and thus is in conflict with the new 50,000 visa provision since many of the applicants in the 50,000 category would be skilled workers and it is most likely that there would be more than 27,000 skilled worker visa applicants annually. We suggest addition to the text of 203(b)(2) the words "under this paragraph."

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The Irish Immigration Reform Movement is a coalition of concerned Americans and established and new Irish immigrants, working in constant communication with such established Irish-American organizations as the Ancient Order of Hibernians, the Ladies Ancient Order of Hibernians, the Emerald Societies, the Brehon Law Society, the Political Education Committee, the Irish American Labor Coalition, and other concerned social and civic organizations.

The imbalances in our immigration policy which S. 1611 seeks to address have resulted in the existence of 150,000 Irish men and women living the lives of undocumented aliens in this country. Ineligible for the amnesty provisions of IRCA, employer sanctions are now forcing this lost generation to contend with massive lay-offs, increased exploitation, and the denial of any hope of contributing their talents and labor to the country that has traditionally represented Ireland's best hope and haven. Were it not for the enlightened programs of Mayor Raymond Flynn in Boston and Catholic Charities in the Archdiocese of New York, they would be almost entirely cut off from even basic medical and legal aid.

The Irish American community is in crisis. It is the responsibility and purpose of the Irish Immigration Reform Movement to see that the 150,000 who have suffered most from the inadvertent imbalances of the 1965 Act are not forgotten, or left to slip between the cracks of reform. We wish to thank Senator Alfonse D'Amato and Congressman Joseph Kennedy for speaking out on this crisis when others were silent, and to urge the Chairman and the Subcommittee to give the most serious consideration to the proposals set forth today in Senator D'Amato's testimony.

We would again like to express our deep thanks to the Chairman and his staff for their innovative and principled approach to reform of our legal immigration system. We are very appreciative of this opportunity to present this statement for consideration by the Subcommittee and for the record.

**Mexican American
Legal Defense
and Educational Fund**

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MALDEF

TESTIMONY

ON

S.1611, TO ALLOW FOREIGN NATIONALS
TO IMMIGRATE TO THE UNITED STATES

BEFORE THE

SENATE SUBCOMMITTEE ON
IMMIGRATION AND REFUGEE AFFAIRS

OCTOBER 23, 1987

SUBMITTED BY

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Introduction

MALDEF is a national civil rights organization whose mission is to protect the rights of Hispanics in the United States. For the past ten years, we have devoted a substantial portion of our resources to immigration matters because the rights of Hispanics are affected whenever significant policy changes are made in our immigration laws. Citizens and legal residents of Hispanic descent are often indistinguishable from their immigrant counterparts; consequently, our enjoyment of rights and privileges depends to a large measure on how we are perceived by the general public and by policy makers.

In view of the major impact that Senate Bill 1611 would have on the Hispanic community, we welcome the opportunity to comment on the bill's provisions. We hope this represents the beginning of many opportunities for dialogue on legislation that has far-reaching consequences for everyone.

Summary of Provisions

Senate Bill 1611 proposes a major overhaul of the preference system allowing foreign nationals to immigrate to the United States. It dramatically shifts the focus of legal immigration from family reunification to independent immigration by curtailing legal immigration through family relationships and increasing the number of visas that may be issued to immigrants with needed job skills. It establishes a periodic review of the preference system so that changes may be effectuated as often as every 5 years. The allocation of visas between the preference and nonpreference categories would also be amended, with the most dramatic changes occurring in the nonpreference category. For the first time, a point system would be established in which applicants would be given points (called "units" in the bill) for desirable attributes such as job skills, education, and English language ability. Finally, the labor certification process is altered so that the requirement of a job offer from an American employer may be waived by the Attorney General if it is in the national interest to do so.

In changing the numerical limitations, the bill states that the number of immigrant visas issued to family reunification immigrants in a fiscal year shall be limited to 216,000 and the difference, if any, between the maximum number of visas issued in the prior fiscal year and the number issued in the current year.1/ While this does not alter the number of immigrant visas based on family relationships, the bill does expand the independent categories from the present 54,000 to 104,000 visas per fiscal year, so that independent immigration is nearly doubled.

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1. Under present law, the overall ceiling for total admissions in a single year is 270,000, including the 3rd and 6th preference categories, which admit immigrants with professional backgrounds and other needed job skills. See 8 U.S.C. (1151(a); Section 201(a) of the Immigration and Nationality Act (hereinafter cited as "INA"). Deducting the maximum number of visas which can be issued under each of these categories (10 percent or 27,000 visas), the proposed new ceiling is the same as the current one for family reunification immigrants.

Another major change is the proposal for a periodic review and revision of the preference system. More specifically, the bill mandates that every 5 years, the Attorney General must issue a report prepared jointly with the Secretaries of State, Labor, and Health and Human Services discussing the need to change the numerical limitations. Factors such as family reunification requirements, foreign policy interests, economic and demographic effects of immigration would be taken into consideration. Within 60 days of the issuance of such a report, the President would submit to Congress a certification on whether the numerical ceilings should be changed and if so, what the new numbers should be.

In amending the preference system, the bill suggests that the preference category allowing the admission of spouses and children of permanent residents be expanded from the current 26 percent2/ to 65 percent. However, it also narrows the definition of children from "unmarried" sons and daughters3/ to "children" of lawful permanent resident aliens. Since the immigration law defines "child" as an "unmarried person under twenty-one years of age...,"4/ only children under 21 would be allowed to immigrate under the proposed legislation.

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2. See 8 U.S.C. (1152(e)(2); Section 203(a)(2) of the INA.

3. See 8 U.S.C. (1153(a)(2). "Unmarried" is defined in 8 U.S.C. (1101(a)(39) as an individual who "at such time is not married, whether or not previously married." Thus, a son or daughter who is divorced or widowed, as well as never married, may be considered "unmarried."

4. 8 U.S.C. (1101(b)(1); Section 101(b)(1) of the INA.

Aside from these changes, S 1611 further restricts the first and fifth preferences. The first preference category admitting unmarried sons and daughters of U.S. citizens would be reduced from 20 percent5/ to 15 percent. The fifth preference allowing siblings of U.S. citizens to immigrate would be cut back from 24 percent6/ to 10 percent and eligibility would be narrowed from brothers and sisters regardless of marital status to unmarried brothers and sisters. Married siblings would be allowed to immigrate under the nonpreference category, which has not been open since 1978.7/.

Other changes are effectuated in the independent immigrant categories as well. For example, aliens applying for admission under the third preference as professionals or others of "exceptional ability in the sciences or the arts" can immigrate even if they do not have an outstanding job offer from an American employer. Moreover, the Attorney General may waive the job offer requirement if it is in the national interest to do so.

Finally, aliens seeking admission under the nonpreference category would be assigned points for certain characteristics, such as ability to speak and read English. Applicants would need at least 70 "units" in order to qualify as nonpreference immigrants.

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5. 8 U.S.C. (1153(a)(1); Section 203(a)(1) of the INA.

6. 8 U.S.C. (1153(a)(5); Section 203(a)(5) of the INA.

7. See 1 Gordon and Rosenfield (2.27h at 2-211 et al.

General Comments

While MALDEF acknowledges the need for a flexible admissions policy that addresses a wide range of concerns, we must remind this Committee that family unity has been a consistent theme throughout the evolution of this nation's immigration laws. We see it in the provisions allowing immediate relatives 8/ of U.S. citizens to immigrate and in the preference system itself. In addition, this country has benefitted substantially from the many cultures brought to our shores by immigrants. We have been financially rewarded by their toil in our factories and culturally enriched by their values. In particular, immigrant traditions honoring the family and stressing close familial ties have been invaluable in keeping our social fabric intact.

Now, for the first time in over 20 years, however, we see the beginnings of a major shift in focus, which could upset the delicate balance between the principles of family reunification and independent immigration. It is this change which we find must disturbing.

It took many years of effort to achieve the system we presently have. Racial and ethnic biases underlying our immigration laws were not addressed until 1965, when amendments 9/ to the Immigration and Nationality Act abolished the discriminatory national origins quota system and the Asiatic

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8. 8 U.S.C. (1151(b); Section 201(b) of the INA. "Immediate relative" is defined as the parent, spouse or child over 21 of a U.S. citizen.

9. Pub. L. 89-236, 79 Stat. 911 (1965).

barred zone. In 1976, another set of amendments 10/ established the current seven category preference system and imposed the numerical restriction of 20,000 visas per country on Western Hemisphere nations. Finally, a 1978 statutory amendment 11/ to the INA combined two previously separate quotas for the Western and Eastern Hemispheres into a single worldwide quota of 270,000.

Beginning with the ~~1965~~ amendments, Congress made a concerted effort to eliminate discriminatory selection procedures based on race or national origin. While some vestiges of discrimination remain,12/ they have, by and large, been erased. But Senate Bill 1611 threatens to resurrect these prejudices. If Congress lends its imprimatur to the legislation, it will signal a major reversal of policy in which national origins will once again play a role in determining which persons can be admitted into the United States.

MALDEF finds this potential shift to be extremely disturbing. During the congressional debates on Simpson-Rodino, the overwhelming public perception of the immigration issue was that it was a "Hispanic problem." The dominant stereotype of the undocumented immigrant was that of an ill-educated, poverty-stricken Hispanic, whether from Mexico or El Salvador. During the debates over the legalization provisions, we found very

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10. Pub. L. 94-571, 90 Stat. 2703 (1976).

11. Pub. L. 95-412, 92 Stat. 907 (1978).

12. Persons born in colonies of foreign states are limited to a colonial quota of 5000 per fiscal year. See 8 U.S.C. (1152(c); Section 202(c) of the INA.

little support for the program. Not only did congresspeople oppose it on the principle that "lawbreakers should not be rewarded," but they also voted against it because they feared the impact that large numbers of newly-legalized Hispanics would have on our political institutions.

Now that we are nearly halfway through the legalization program, we realize that undocumented immigrants come from other countries besides Mexico. In fact, they hail from all over the world: Iran, England, Canada and Ireland, to name a few. Earlier this year, INS and the Census Bureau estimated that "amnesty-eligible" European, Canadian, Israeli and Iranian undocumented would number at least 250,000.13/ But it is increasingly apparent that many will not qualify and consequently will not benefit from the program.14/

While MALDEF sympathizes with their plight, resolution of their ineligibility should not jeopardize the ability of other people to immigrate to this country. We should search for solutions that will equalize the benefits for everyone, rather than sacrifice one group for another.

The attempt to expand the independent immigrant categories also raises important policy considerations. Encouraging the immigration of foreign professionals in the absence of firm job offers from American employers could aggravate the "brain drain"

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13. Mark I. Pinsky, "Illegals: You'd Be Surprised," Los Angeles Times, January 26, 1987, Part I, pages 1,14.

14. Tom Morganthau, et al., "The Jittery 'Other Illegals'," Newsweek, October 5, 1987, 35-36.

from developing countries. In the long run, immigration of this kind could have serious consequences for both the sending countries and the United States.

From the perspective of developing countries, expanded immigration under the independent categories could further destabilize already precarious economies by depriving these nations of the human resources they need to build a strong economic and political infrastructure. For the United States, excessive reliance on foreign professionals could lead to greater neglect of our public schools. Employer dependence on foreign student graduates results in part from the inadequacies found in our educational institutions. They have not kept pace with technological change and consequently have not provided employers with a marketable labor pool. But rather than avoid the problem by expanding independent immigration to the U.S., we should confront the issue and redirect our efforts at solving the problems in our public schools. The benefits will be longer lasting and our children will be assured a future.

With respect to the proposed changes in the nonpreference category, it is not clear at this time whether any visas would be available. If there are, however, we object to the de facto point system established under the bill. It would, among other things, assign points, or "units," for attributes deemed desirable. For example, 10 units would be assigned to foreign nationals who completed high school or its equivalent; another 10 units would be awarded those with college degrees, and a maximum of 5 units would be given to persons with graduate degrees, depending upon the level of graduate study. For aliens in their prime work years of 18 to 40, 10 units would be awarded; on the other hand, aliens over the age of 40 would lose 2 units for every year in excess of 40, thus revealing an age bias against older immigrants. In addition, foreign nationals who speak and read English receive the benefit of 10 units. Once an alien tallies up at least 70 units, (s)he will qualify for the nonpreference category.

We find this system to be an extremely elitist one based on wealth and privilege. It reflects social, cultural and economic biases repugnant to the principles of fairness and egalitarianism. In many countries, education beyond the primary grades is attainable only if citizens have the funds to pay their way through school or if they belong to priviliged classes. Rather than limit our search to the upper and middle classes, which is suggested by this bill, we should continue our efforts to draw from a diverse segment of the immigrant pool.

To assign points for English language skills also reflects an ethnic and cultural bias in favor of those few nations where English is the native tongue. Such blatant favoritism is shocking, for it strikes at the very heart of what this country values -- diversity of opinion, language, and culture.

Conclusion

As we have stated on many occasions, immigration reform is a complex, emotionally charged issue. It must therefore be approached with caution and an outlook of achieving long-range solutions rather than short-term responses. If handled wisely, immigration reform can stimulate our economy, enrich our society and improve our ties with important allies. On the other hand, if dealt with poorly, it can devastate our economy, shatter families and aggravate the hostility and prejudice against immigrants and Hispanic Americans alike.

When we consider the fact that Senate Bill 1611 would admit a car mechanic but not allow a husband, wife and children to live together in the United States, we must question the priority of our values.

Written Testimony

from

Dr. Thomas Abraham, President

National Federation of Asian Indian Organizations in America

Before the

Senate Sub-Comittee on Immigration and Refugee Affairs

Hearings on the Bill S.1611 "Imigration Act of 1987"

Friday, October 23, 1987

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Mr. Chairman and Distinguished Members of the Committee:

I am Thomas Abraham, a resident of Stamford, Connecticut. I am the President of the National Federation of Asian Indian Organizations in America, an umbrella organization for over 200 Indian organizations representing over 700,000 people of Indian orgin in the U.S. The Indian American community may be relatively small as percentage of the whole, but it has already become a significant contributing force to the economic, social, and cultural patterns in this country. We, therefore, appreciate this opportunity provided to us to submit a written statement on an issue that is of grave concern to us.

We are highly disturbed and dismayed by certain provisions of the new bill S.1611, "Immigration Act of 1987". We are mainly concerned about the those provisions which will take away the immigration of adult children of immigrants and married brothers and sisters of citizens. We have no objection to increasing the number of people from European countries immigrating to the U.S. However, it is an injustice to those of us who are recently immigrated to the United States to deny our right to bring our immediate blood relations.

Traditionally, the members of Asian families are very close to each other. We cannot distinguish between unmarried children above 21 or below 21 years of age. With the influence of our joint family system in India, to us, a brother and sister are as close as a son and a daughter. Our family strengths are only because our closeness to each other. This very strong family relationship, nurtured us through an ancient cuture, has instilled us from childhood. It is this bond of love and obligation that binds us to those dear ones we have left behind in India. The current preference system assures us that we, the new citizens, too, will have the same right to family reunification that has been given to those who were lucky enough to land here before we did. If the proposed changes were made in the preference system, many of us may never again be united with our family members who we have left behind and whose love and warmth we miss daily and whose welfare is at our heart during every waking moment.

The 1965 Immigration Act, sponsored at the initiative of President Kennedy to eliminate preferential quota system, opened doors ~~to~~ the immigrants from Asian countries. However, the bill 1611 preferentially will benefit persons from those countries who are alleged to have been adversely affected by the 1965 Act at the cost of the family reunification of recent immigrants. The Immigration Bill passed in 1986 maintained the family reunification provisions after extensive discussion in the Senate and House. We fail to understand why this new bill goes back again to make changes in the family reunification categories.

Although we agree that there is merit in the argument that more visa numbers should be made available to spouses under the 2nd preference category and waiting period for spouses should be reduced to minimum, this could be achieved by reclassification of Immediate Relative category to include spouse of a permanent resident alien similar to the spouse of a United States citizen. Aliens who qualify under Immediate Relative category should not be subjected to numerical limitations.

Therefore, we request you to keep these family reunification clauses as it is in the current immigration laws.

ORGANIZATION OF CHINESE AMERICANS®, INC. 美華協會
EMBRACING THE HOPES AND ASPIRATIONS OF CHINESE IN THE UNITED STATES
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STATEMENT OF

ORGANIZATION OF CHINESE AMERICANS, INC.

(OCA)

HEARING BEFORE THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

OCTOBER 23, 1987

SUMMARY

The Organization of Chinese Americans, Inc. (OCA) believes that any legislation reforming the current immigration quota system must be firmly grounded in the principle of family unification. OCA also understands that there may very well be a need for additional visas to help "new seed" immigrants. Accordingly, OCA supports or does not object to many aspects of the proposed legislation. Specifically, OCA strongly supports an increase in numbers within the family preference visa system for second preference visas, and does not object to lesser numbers for the first and fourth preferences. In addition, OCA supports the concept of adding 50,000 additional visas in a new nonpreference category within the independent visa system.

However, OCA does not believe that all of the recommendations of the Select Commission on Immigration and Refugee Policy should be inflexibly represented in S. 1611. Some aspects of the bill have the potential to turn back the clock, and raise the specter of discrimination against Asian and Hispanic peoples in setting immigration quotas. OCA submits that the following modifications should be made in the proposed legislation so that changes in the immigration system are not made at the expense of the principle of family unification or to the detriment of Chinese, Asian and Hispanic peoples:

* The number of annual visas for the fifth preference category should increase over the current 64,800 or remain the same. The proposed limitation to unmarried brothers and sisters should be deleted.

* The number of annual visas for the second preference category should increase over the current 70,200. The proposed limitation to unmarried sons and daughters under 21 years of age should be deleted.

* The point system for nonpreference visas should be replaced by a system which is nondiscriminatory and objectively structured and which reflects principles of fairness and due process in the processing of visas. Alternatively, if a point system is retained, the 30-point factor for 36 "adversely affected" countries and the 10-point English-ability factor should be eliminated.

* The 20,000 visas per country annual limitation should only apply to the current total of 270,000 visas. A separate annual limitation should be applied to the proposed total of 50,000 additional, nonpreference visas.

Introduction

The Organization of Chinese Americans, Inc. (OCA) is celebrating its 14th anniversary this year as the most prominent Chinese American volunteer and civic organization in the nation. OCA has more than 7,000 members in 40 chapters across 23 states and the District of Columbia. Among our members are elected officials at the federal, state and local levels. While our focus is on the Chinese in this country, our membership is not exclusively Chinese, and our issues are relevant to all Asian Americans as well as other Americans.

OCA is a nonprofit, national organization dedicated to fostering the educational, cultural and charitable goals of Chinese Americans and other Asian Americans. We are particularly interested in promoting understanding and better relations among Asian Americans and other Americans through education and mutual interaction. OCA also highly encourages its members to participate fully in civic affairs and the political process, including the vigorous support of human rights legislation and the enforcement of civil rights laws. (Since OCA is a nonpartisan, 501(c)(3) organization, support of particular political candidates and parties is a matter of individual choice and action.)

Asian peoples came to this country in order to contribute to American society, business and government, and what we are guaranteed under the Constitution is an equal opportunity to do so as other citizens. One of the best ways in which that opportunity may be met is by promoting a society which encourages full participation by Asian Americans in all aspects of American life.

Asian Americans comprise the fastest growing minority group in the country. There are currently more than 5.2 million Asians in this country, with that number projected to double to 10 million by 1995. In recent years, Asians and Hispanics have comprised about 80 percent of the immigration to this country.

Overview

OCA understands that S. 1611 stems in part from immigration reform bills of the last several Congresses and from findings and recommendations of the Select Commission on Immigration and Refugee Policy. Thus, OCA supports or does not object to many aspects of the proposed legislation. Specifically, OCA strongly supports an increase in numbers within the family preference visa system for second preference visas, and does not object to lesser numbers for the first and fourth preferences. In addition, OCA supports the concept of adding 50,000 additional visas in a new nonpreference category within the independent visa system.

However, OCA does not believe that all of the recommendations of the Select Commission should be inflexibly represented in S. 1611. Accordingly, OCA presents the following concerns which we submit this Subcommittee must address before S. 1611 moves forward:

* The fifth preference category as proposed presents two problems. First, the reduction in numbers from 64,800 visas annually to 21,600 visas annually would double an already heavy backlog in many Asian and other countries. For example, the 10-year backlog for the fifth preference in China, Hong Kong, Korea, the Philippines, India, Mexico and the Dominican Republic would likely expand to 20 years under S. 1611 as currently written. This would be directly contrary to the recommendations of the Select Commission.

Second, the proposed limitation in the fifth preference category to unmarried brothers and sisters of adult U.S. citizens is contrary to the principle of family unification. It would be anathema to Chinese and Asian peoples -- indeed, all nationalities of which we are aware -- to treat married brothers and sisters differently from unmarried brothers and sisters. It would also be contrary to recommendations of the Select Commission.

* As with the fifth preference limitation, the proposed limitation in the second preference category to unmarried sons and daughters of residents under 21 years of age is also contrary to the principle of family reunification. In Chinese and Asian cultures -- as in other cultures -- unmarried sons and daughters over the age of 21 are just as important to families as unmarried sons and daughters under 21. This problem in the bill is exacerbated by the absence of a grandfather provision.

* Any point system for the 50,000 additional, nonpreference visas would be subjective in its choice of point categories and, once established, too easily subject to manipulation of categories and assigned points. Moreover, if the Subcommittee is determined to go ahead with a point system, other difficult issues would need to be addressed. First, the 30-point criterion for those in an "adversely affected country" is discriminatory _per se_ against most Asian, Hispanic and Third World countries. Second, the 10-point criterion for the ability to speak and read English is facially neutral, but in application would likely discriminate against most Asian, Hispanic and Third World countries.

* As we understand it, S. 1611 would still require retention of an annual ceiling of 20,000 visas per country regardless of whether the numeric limitation is applicable for family preference visas or for independent visas, or both. By mixing the 50,000 additional, nonpreference visas in with the current pot of 270,000 family and independent visas, the proposed legislation would merely intensify the competition for available visas in those countries, such as China and Taiwan, which are already at the 20,000 visa annual limit.

OCA's recommendations for modifications in the bill which would resolve these issues are presented below in detailed discussion of individual points.

Discussion and Recommendations

1. Fifth preference

Our immigration lawyers tell us that there is currently a 10-year backlog in fifth preference visas in at least seven countries: China, Hong Kong, Korea, the Philippines, India, Mexico and the Dominican Republic. (According to the Immigration and Naturalization Service (INS), there is approximately a five-year "priority date" backlog for fifth preference visas for these countries, but since the INS is processing the cases at the rate of about two weeks a month, the actual backlog is closer to 10 years than five years.)

Obviously, reducing the 64,800 annual visas in the fifth preference category to 21,600 visas annually would only increase this already heavy backlog. Our best estimate is that the reduction proposed in S. 1611 would double the backlog in many countries, extending the 10-year backlog in the seven aforementioned countries to 20 years. This would be directly contrary to the recommendations of the Select Commission, which urged just the reverse, that the backlogs in the immigration system be cleared up. Clearly, the principle of family reunification which the immigration system should always strive to uphold would take a severe beating if the bill is not modified.

Moreover, the principle of family reunification would take a back seat in the proposal's limitation of the fifth preference to unmarried brothers and sisters of adult U.S. citizens. As in other cultures, Chinese and Asian peoples simply do not differentiate between married brothers and sisters and unmarried brothers and sisters. It is just as important to us to bring our married siblings to the United States as it is to rejoin with our unmarried siblings.

We note that the Select Commission agreed with OCA that married brothers and sisters should be treated the same as unmarried brothers and sisters in the immigration systems. See Select Commission Report, Executive Summary, Recommendations, Section III.C.4.

Accordingly, OCA recommends that the number of annual visas for the fifth preference category increase if possible over the current 64,800 or, at the least, remain at 64,800. We also recommend that the proposed limitation to unmarried brothers and sisters be eliminated.

2. Second preference

OCA is also concerned with the proposed limitation in the second preference category to unmarried sons and daughters of residents under 21 years of age. As explained previously, the principle of family reunification demands that unmarried children over 21 be on the same footing as unmarried sons and daughters under 21 for immigration purposes.

This problem in the bill is aggravated by the absence of a grandfather provision, which is present in the legislation's treatment of fifth preference visas.

Consequently, OCA recommends that the number of annual visas for the second preference category increase, though not necessarily from 70,200 to 140,400. We recognize that if the number of annual visas for the fifth preference is to increase or stay the same (rather than precipitously plummet), numbers may have to be reallocated from the first, second or fourth preference categories.

Second, we recommend that the proposed limitation to unmarried sons and daughters under 21 be deleted. Assuming arguendo the Subcommittee decides to retain this limitation -- which OCA vigorously opposes -- it should at minimum include a grandfather provision consistent with the bill's treatment of fifth preference visas.

3. Point system for nonpreference visas

While OCA supports the concept of 50,000 additional, nonpreference visas, we are not persuaded that a point system (especially as set forth in S. 1611) is the proper way to implement the new nonpreference visas. The problems with a point system are that it is bound to be subjective in its choice of point categories and that, once established, it is too easily subject to manipulation of categories and assigned points.

OCA strongly urges the Subcommittee to reconsider the proposed point system carefully. The proposed legislation does not make a convincing showing that a point system for processing nonpreference visas is better than individual labor certifications. At minimum, nonpreference visas should be granted in a nondiscriminatory and objectively structured system which reflects fundamental fairness and contains the full panoply of rights of due process.

Alternatively, if the Subcommittee is determined to forge ahead with a point system, OCA has several specific concerns.

First, the 30-point criterion for those in one of 36 "adversely affected" countries is discriminatory per se against most Asian, Hispanic and Third World countries. The list of 36 favored countries includes only Japan and Indonesia from Asia. More importantly, it excludes 10 Asian and Hispanic countries with either enormous backlogs of visa applications or easily filled visa limits every year: China, Taiwan, Hong Kong, Korea, the Philippines, Thailand, Singapore, India, Mexico and the Dominican Republic.

Racial exclusion is an ugly concept in whatever form it is couched. Historically, racially discriminatory laws were in place for long periods of time to prohibit the immigration of Chinese, Japanese and other Asian groups to this country. The 30-point factor rolls back the clock without factual justification. We note that the Canadian point system does not provide any additional points for persons born in specified countries. The creation of any favored list would establish a terrible precedent for the immigration system in the future, and would once again raise the specter of racial discrimination in setting immigration quotas.

Second, the 10-point criterion for the ability to speak and read English is facially neutral, but in application would likely discriminate against most Asian, Hispanic and Third World countries (excepting British Commonwealth nations). OCA realizes that the ability to speak and read English is a helpful skill that increases the employability of nonpreference applicants. Nevertheless, when one considers the effect of the 30-point criterion in conjunction with the English-ability factor, anyone from Canada, Great Britain or Ireland would have an automatic 40-point head start for nonpreference visas.

Hence, OCA recommends that both of these criteria be eliminated from the point system for nonpreference visas. Alternatively, deletion of the 30-point factor would at least soften the impact of the English-ability factor. Finally, assuming arguendo the Subcommittee is determined to retain both of these criteria -- which OCA strongly oppose -- it should at minimum (1) reduce the 30-point criterion to 10 points, and (2) open up the list to include other countries such as the 10 with heavy backlogs indicated above.

4. 20,000 visa annual ceiling

As we read it, S. 1611 would still require retention of an annual ceiling of 20,000 visas per country regardless of whether the numeric limitation is applicable for family preference visas or for independent visas, or both. 133 Cong. Rec. S 11490 (Aug. 6, 1987 daily ed.). The problem with this approach is that it mixes the 50,000 additional, nonpreference visas in with the same current pot of 270,000 family and independent visas, thus exacerbating the already intense competition for available visas in countries which easily reach the 20,000 limit every year. Therefore, under the proposed approach persons in such countries as China, Taiwan, Korea, the Philippines, India, Mexico and the Dominican Republic cannot possibly stand to benefit from the addition of 50,000 nonpreference visas, regardless of their employability, education and occupational skills.

Accordingly, OCA recommends that the 50,000 additional, nonpreference visas not be subject to the 20,000 visas per country annual limitation. OCA has refrained from requesting untimely modifications, such as increases in the visa systems beyond the current 270,000 total limit or the proposed 320,000 total limit. However, we strongly believe that the proposed nonpreference visa category cannot operate as it was intended without harming persons in countries such as China and Taiwan and the other countries indicated above unless the entire category is separated out from the preference categories for purposes of numerical limitations per country. In short, what OCA proposes is that the 20,000 visas per country annual limitation be applied to the current total of 270,000 visas and that a separate annual limitation (for example, 2,000 visas per country) be applied to the proposed total of 50,000 nonpreference visas.

Conclusions

S. 1611 has some good features, but also has the potential to turn back the clock. Certain aspects of the bill raise the specter of discrimination against Asian and Hispanic peoples in setting immigration quotas. OCA believes that it can whole-heartedly support the proposed legislation only if the following changes are made:

* The number of annual visas for the fifth preference category should increase over the current 64,800 or remain the same. The proposed limitation to unmarried brothers and sisters should be deleted.

* The number of annual visas for the second preference category should increase over the current 70,200. The proposed limitation to unmarried sons and daughters under 21 years of age should be deleted.

* The point system for nonpreference visas should be replaced by a system which is nondiscriminatory and objectively structured and which reflects principles of fairness and due process in the processing of visas. Alternatively, if a point system is retained, the 30-point factor for 36 "adversely affected" countries and the 10-point English-ability factor should be eliminated.

* The 20,000 visas per country annual limitation should only apply to the current total of 270,000 visas. A separate annual limitation should be applied to the proposed total of 50,000 additional, nonpreference visas.

OCA appreciates the opportunity to present this statement for consideration by the Subcomittee and for the record.

U.S. DEPARTMENT OF LABOR
SECRETARY OF LABOR
WASHINGTON, D.C.

March 3, 1988

Dear Alan:

This is in response to your request for the Department of Labor's views regarding your draft proposed bill, which would revise the current system for admitting legal immigrants to the United States. While we recognize that the draft differs from the bill you are now co-sponsoring with Senator Kennedy, our comments at this stage focus on the details of the draft.

At the outset, let me indicate that we have serious reservations about making major changes to that system until both the Administration and the Congress have had a chance to evaluate the impact of the Immigration Reform and Control Act (IRCA) on our nation's economy, labor market and society. We will, through the analyses that Congress has required under IRCA, increase our understanding of these impacts, and thus be in a better position to knowledgeably consider and recommend changes in our legal immigration system.

We agree that a review of the U.S. legal immigration system would be useful. Your draft proposal makes a valuable contribution toward commencing this review.

As you know, the Department of Labor is primarily concerned with the labor-market impacts of current and proposed U.S. immigration policy. We believe it is essential that U.S. immigration policy protect the job opportunities and working conditions of all United States workers, while at the same time providing the flexibility needed to meet legitimate labor market needs. In evaluating proposed changes to U.S. immigration laws, this Department can provide particular expertise with respect to those provisions which directly affect U.S. workers. However, almost any change in U.S. immigration policy can have an impact on the United States labor market. For example, changes in the skills composition of immigrants admitted in pursuit of our family reunification policies can have a significant labor market impact. Accordingly, we welcome the opportunity to review your proposal in its entirety.

Under current law, immediate relatives of U.S. citizens are admitted without numerical restrictions. Other immigrants are limited annually to a worldwide ceiling of 270,000 and per-country limits of 20,000. Numerically restricted immigrants are admitted under a single six-class preference system. Four preferences (80 percent of the ceiling) are for various types of relatives of U.S. citizens or previously admitted immigrants. The remaining two preferences are for immigrants admitted for employment purposes. Admission of these immigrant workers is contingent upon each worker's obtaining a U.S. job offer and certification from the Secretary of Labor that sufficient qualified U.S. workers are not available for the job and that the wages and working conditions attached to the job offer will not adversely affect similarly employed U.S. workers.

A significant feature of your proposal is to establish two separate preference systems: one for "family connection" immigration and one for "independent" immigration. The family connection preference system would adhere, with some exceptions, to the general principle of family reunification, and would consist of three preference categories. The independent system, which would include, but not be limited to, immigrant workers, would have five preference categories. The present system's worldwide, category, and per-country numerical limitations would be modified.

More specifically, section 2(a) of your proposal would amend section 203 of the Immigration and Nationality Act (INA) to establish separate preference systems and annual numerical limitations for "family connection" and "independent" immigrants. Immediate relatives (defined by section 2(b), described below) and refugees would continue to be admitted without numerical restriction. The annual limit on "family connection" immigration would initially be 465,000 minus the number of immediate relatives and refugees admitted in the previous fiscal year. Independent immigrant admissions would fall under a separate system and would be limited initially to 100,000 annually. Unused visa numbers from either preference system may be used by the other in the next fiscal year.

Section 2(b) would amend section 201 of the INA to narrow the current definition of "immediate relatives" to the spouse and children of a U.S. citizen. Under current law, parents of adult U.S. citizens are also defined as immediate relatives.

The Department of Labor has no objection to the establishment of separate numerical limits on family connection and independent immigrants.

The proposal's numerical limitations on the "family connection" preference system should be given careful consideration as to their implications for U.S. immigration policy on family reunification. On the basis of FY 1986 immediate relative (other than parents) and refugee admissions, some 221,000 visas would be available for "family connection" immigration under your proposal -- a slight increase from the 216,000 visas currently available for relative preferences. However, if either immediate relative or refugee admissions increase in future years, the numbers available for "family connection" immigrants will decrease accordingly. The Department defers to the Departments of Justice and State with regard to the administrative implications of this aspect of your proposal.

The proposal's provisions for per country limits also need careful consideration. Section 2(c) would amend section 202(a) of the INA to continue the annual per country limits of 20,000 on preference immigrant admissions. It would, however, also require such limits to be decreased in any year when immediate relative immigration from that country in the preceding year exceeds certain limits.

Section 2(d) of the proposal would establish a highly structured procedure under which numerical limitations on preference immigration could be revised every three years. That subsection provides that the Attorney General, in consultation with the Departments of State, Labor, and Health and Human Services, shall annually prepare and submit to the President and the Senate and House Judiciary Committees a report discussing the need (if any) to revise the numerical limitations. Such report is to take into account a variety of factors, including the impact of immigration on labor needs, employment, and other economic and domestic conditions in the United States.

We believe careful consideration needs to be given to the merits of a legal requirement for a periodic report and redetermination of the numerical limits on preference class immigration, and the procedures established for such a report and redetermination. We would note, however, that it is appropriate that labor market implications continue to be considered in any review of U.S. immigration policy. It is also appropriate that this Department play a role in evaluating those labor market implications.

Section 3(a) of the bill would amend section 203 of the INA to establish a new three-class preference system for "family connection" immigrants. First preference admissions -- spouses and children of permanent residents -- would be limited to 60 percent of family connection visa numbers, plus any unused visa numbers from family connection second and third preferences. Second preference -- parents and never-married adult sons and daughters of U.S. citizens -- would be limited to 30 percent of family connection visa numbers, plus any unused numbers from first preference. Third preference -- current fourth and fifth preference visa applicants (i.e. married sons and daughters of U.S. citizens, and brothers and sisters of adult U.S. citizens respectively) whose applications are approved as of the date of enactment -- would be limited to 10 percent of family connection numbers, plus any unused visas from the first two preferences.

Under these categories, certain aliens would no longer qualify for admission as family members, and would thus have to compete under the "independent immigrant" preferences. One such group is previously married sons and daughters of U.S. citizens (included in the current first preference). Another such group is unmarried adult sons and daughters of lawful permanent residents (included in the current second preference). Moreover, with respect to widowed or divorced sons or daughters under age 21, the proposal creates a situation in which family reunification of lawful permanent residents is treated more favorably than family reunification for U.S. citizens: only such sons and daughters of the lawful permanent residents would be eligible for admission under the new first preference category. In addition, the current fourth and fifth preferences would be eliminated; except for those who, as noted above, have approved visa petitions as of the date of enactment. We would note that eventually no one would be eligible for this preference class. We believe the changes in family reunification preferences deserve careful study.

Section 3(b) of the proposal would amend section 203 of the INA to establish a separate five-class preference system for "independent immigrants": (1) special immigrants, as defined in section 101(a)(27) of the INA; (2) aliens of exceptional ability or members of the professions holding doctoral or equivalent degrees; (3) skilled workers; (4) investors; and (5) a new category known as "selected immigrants." A numerical limit would be imposed on each category, and immigrants in some of these categories would also be required to have a U.S. job offer and labor certification.

First preference independent immigrant admissions would be returning lawful permanent residents, former U.S. citizens applying for reacquisition of citizenship, certain ministers of religion, certain alien employees or retired employees of the U.S. government abroad, specified Panama Canal Zone immigrants, and certain foreign medical graduates. Admissions would be limited initially to 10,000. No U.S. job offer or labor certification is required.

While such special immigrants are currently admitted outside the worldwide numerical ceiling on preference admissions, we have no objection to including them within such a ceiling, except for returning lawful permanent residents and former U.S. citizens applying for reacquisition of citizenship. We note that inclusion of the latter two groups in the draft appears to be a drafting error. In recent years, (FY 1984-86), an average of some 5,000 special immigrants have been admitted annually.

The proposed independent second preference class is for "qualified immigrants who are members of the professions holding doctoral or equivalent degrees, or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States". This independent immigrant preference class is similar to the existing third preference, but, like S. 1611, differs from it in several respects.

First, the proposal would limit members of the professions to those holding doctoral degrees or the equivalent. Second, the proposal would specify that possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of higher learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of exceptional ability. Third, the preference class would include, for the first time, those with exceptional ability in business.

The proposal would limit second independent preference admissions to 25,000 annually, plus any unused visa numbers from the independent first preference. Based on recent immigrant flows, the unused first preference visa numbers may increase second independent preference admissions by 5,000 annually. Like current third preference immigrants, aliens in this category would be required to have a U.S. job offer and labor certification. The proposal would provide, however, that the requirement of a U.S. job offer for second preference independent immigrants may be waived by the Attorney General if he deems it in the national interest.

The independent third preference -- qualified workers capable of performing skilled labor requiring at least three years of training or experience -- is similar to, but more narrowly defined than, the existing sixth preference. Specifically, the existing sixth preference also includes unskilled workers in short supply. We note that your proposal would be drawn more narrowly than would S. 1611's skilled workers category, as the latter does not specify that the work for which these immigrants are admitted requires at least three years' training or experience.

Admissions under the third preference category would be limited initially to 25,000, plus unused numbers from the first two independent categories. Like the independent second preference, these workers would be required to have a U.S. job offer and a labor certification. Unlike the case of those with exceptional ability in the arts and sciences under the second preference, however, no waivers of the U.S. job offer would be authorized for third preference aliens.

Requiring increased skill levels for admission to the U.S. in the independent second and third preferences appears to be in line with the projections of this Department and others that most new jobs in the U.S. economy will demand more education and higher levels of language, math, and reasoning skills than have been necessary in the past. We must ensure that we adopt the most effective method for protecting the job opportunities, wages and working conditions of all U.S. workers while at the same time being responsive to U.S. labor market needs. In order to accomplish that goal, it would be appropriate to explore other avenues, including encouraging the training of U.S. workers for jobs for which aliens are sought. As I stated when I took my oath of office as Secretary of Labor, the U.S. must never have to import skilled workers because we failed as a nation to provide opportunities for excellence in education and training. Our goal is to keep Americans working. We believe an appropriate U.S. immigration policy is one which insures that U.S. workers are given every opportunity to become more fully integrated into the labor force.

With regard to empowering the Attorney General to waive the requirement of a U.S. job offer for second preference aliens, the Department wishes to urge extreme caution. We support the idea of such a waiver in principle. In some instances, such as those involving artists who are typically self-employed, the labor market implications may well be insignificant. In virtually all other cases, however, aliens entering under this preference will have distinct labor market implications. The question of whether the requirement of pre-arranged employment should be waived therefore becomes an important consideration. In view of this reality, and since labor certification would be a precondition of application for second preference independent immigrant visas, we feel that any authority to waive the job offer requirement should most appropriately rest with the Secretary of Labor.

The fourth independent preference class to be established by your proposal would include qualified immigrants who have invested, or who establish with the Attorney General their intention to invest, at least $2 million in an enterprise in the U.S. that will benefit the U.S. economy and create full-time employment for at least 10 individuals, other than the spouse or children of such immigrants. This category would be limited to 5,000 admissions annually.

This Department perceives no objection to the establishment of a category for immigrant investors, and supports a requirement that their investments create a minimum number of full-time U.S. jobs. However, we would note that while the provision, as currently drafted, would require the creation of at least ten full-time jobs, it does not specify that those jobs must be located in the U.S. or must go to U.S. workers. Thus, for example, five out of ten jobs in a U.S.-based international trade firm could be overseas jobs. Nor does the proposed bill prohibit the importation of foreign workers for those newly-created jobs. While we recognize that aliens who might be used to fill such jobs are generally subject to labor certification requirements, there are special exceptions (e.g. intra-company transferees) that might be particularly subject to abuse in such cases. Accordingly, any legislation to establish a category of immigrant investors should be strengthened in this regard.

The fifth preference--qualified point system immigrants--is a new category and would be limited to 35,000 visas, plus unused visas from the first four independent preference classes. Aliens would qualify for this preference class by accumulating 40 points based on the following criteria:

1) Desirable age: ages 21-35 -- 10 points
   ages 36-44 -- 5 points

2) Successful completion of grade school through high school, or educational equivalent, as determined by the Secretary of Education -- 5 points

3) Bachelors' degree or equivalent, as determined by the Secretary of Education -- 5 points

4) Graduate degrees -- up to 5 points, to be determined by Secretary of Education based on level of the degree

5) Speaking and reading English -- 10 points

6) Demonstrated knowledge and understanding of fundamentals of history, and principles and form of government of the U.S. -- 5 points

7) Aliens in occupations for which the Secretary of Labor has determined that U.S. workers are in short supply -- up to 10 points

8) Significant training, education, or work experience relating to occupations described in (7) -- up to 15 points, as determined by the Secretary of Labor

The proposal does not specify the manner in which immigrants would be selected from among the pool of eligible aliens. However, it does provide that prospective "selected" immigrants must apply for visas abroad, and further provides that such visas may not be issued more than two years after approval of the application.

The Department of Labor has serious concerns about any proposal to admit aliens on the basis of a point system without a test of the U.S. labor market. By definition, such immigrants would not be admitted to fill a specific labor market need nor would they be required to have exceptional abilities. By not conditioning the admission of these immigrants on U.S. worker availability and on their impact on U.S. wages and working conditions, this proposal would leave American workers vulnerable to displacement and may lead to a deterioration of their wages and working conditions. We believe such labor market considerations to be fundamental to the protection of U.S. workers.

Moreover the point system, as proposed in the draft bill, could create additional administrative burdens for this Department. Under your proposal, the Secretary of Labor would be responsible for assigning points to prospective point system immigrants with regard to (1) occupation, i.e., for occupations in which there is a shortage of U.S. workers in the U.S., and (2) extent of training, education, or work experience relating to such occupations. With estimates of potential applicants in this category ranging into the millions, this considerable increase in workload would be extremely staff intensive and costly, and without clear offsetting benefits to the United States.

Section 4 of your proposal would amend section 212(a)(14) of the Immigration and Nationality Act to alter the procedure for granting labor certifications to aliens coming to the U.S. for employment purposes. Under current law, the Secretary of Labor makes labor certification determinations on a case-by-case basis, deciding in each case: (1) whether there are sufficient U.S. workers who are able, willing, qualified (or "equally qualified" in the case of teachers or those with exceptional ability in the arts or sciences) and available at the time of application for a visa and at the place where the alien is to perform such labor; and (2) whether the employment of that particular alien would adversely affect the wages and working conditions of U.S. workers similarly employed. The proposed bill would permit the Secretary of Labor to make such determinations on the basis of labor market information. Thus, while provision for individual case determination would remain, recruitment of workers for specific job opportunities would no longer be required in order to test the availability of qualified workers in the United States.

As we have previously testified on this procedural matter, the Department believes that the use of labor market information in making labor certification determinations could prove significantly less costly and time-consuming than current labor certification procedures, without hindering our ability to protect U.S. workers.

The Department of Labor remains concerned about one feature of Sec. 212(a)(14) of current U.S. immigration law which both your proposal and S. 1611 would continue, namely, the application of the "equally qualified" standard to members of the teaching profession. The continuation of this special standard of availability, which was extended to employers of college or university teachers in 1976, permits educational institutions to petition for the admission of "more qualified" aliens, even if qualified U.S. teachers are available.

In our view, American workers should be hired whenever possible, and qualified American workers in professional occupations merit the same kind of labor market protections accorded to workers in all other occupations. While this Department supports, and currently applies, a special standard for aliens of exceptional ability in the sciences or arts, we do not support the application of such a standard to aliens on the basis of their occupation alone.

This concludes our comments on your proposal. Thank you again for the opportunity to review it in detail. We hope you will find our comments useful in thinking further about the future of our immigration laws.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Ann

ANN McLAUGHLIN

The Honorable Alan K. Simpson
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Zero
Population
Growth

ZPG STATEMENT ON SENATOR SIMPSON'S LEGAL IMMIGRATION PROPOSAL

Introduction

Zero Population Growth, Inc. is a national membership organization founded in 1968 to broaden public awareness of the impacts of population growth on society.

We address the immigration issue because of its growing contribution to the U.S. population growth rate. If U.S. fertility rates remain below replacement level, immigration will play a larger role in any future population increases. Today, net immigration, legal plus illegal minus emigration, accounts for over forty percent of this country's population growth.

Far too often, government becomes involved in managing crisis rather than looking for ways to anticipate change and head off conflict. Crisis management in an era of unprecedented change and uncertainty is a dangerous way to govern. Senators Simpson and Kennedy should be commended for their efforts to examine the legal immigration issue when no immediate "crisis" exists.

ZPG believes that immigration policy should be considered in the context of an overall U.S. population policy. We favor a policy that recognizes the benefits of achieving population stabilization.

Without a ceiling, there is little control over a major component of U.S. population growth. Senator Simpson's proposal would keep legal immigration levels at their current level. The proposal is generous, yet it provides for a more orderly legal immigration system so the U.S. can better plan for and help assimilate newcomers. ZPG supports the bill's annual reporting section that requires more detailed information and analysis on immigration impacts.

In examining immigration issues, however, ZPG urges Congress and the executive branch to focus also on the broader issues surrounding international migrations of people. It is time for Congress and the executive branch to stop ignoring the rising population pressures that will continue to push people to our borders.

Demographic Considerations

Since 1965, the last time Congress passed a major legal immigration bill, 50 million people have been added to the U.S. population. The U.S., with 243 million people, is the world's fastest growing industrialized nation, adding more than 2 million people each year. Census Bureau projections indicate that in just 13 years the U.S. population will exceed 270 million, double the 1945 population.

The U.S. accepts more legal immigrants for permanent resettlement than the rest of the world combined. Further, we still do not know what the eventual demographic impact of last year's immigration bill will be.

The Immigration Reform and Control Act allows millions of illegal immigrants who have continuously resided in the U.S. for at least five years to apply for permanent resident status. Under current law, those who become U.S. citizens can then bring in their immediate relatives.

The vast majority of immigrants are young, which means that their reproductive years are still ahead of them. Since the early 70's immigrants have come primarily from high fertility countries. It is reasonable, therefore, to expect that their fertility behavior will not adjust to U.S. fertility patterns until the second generation. We are already seeing this as Hispanic fertility was five times that of the non-Hispanic population in 1986.

We are at a crossroads. With the fertility rate currently below replacement level, Congress has the opportunity to set us on a speedier path toward population stabilization.

Numerical Limitations

The Simpson proposal recognizes that the national interest is best served by better managing immigration flows. By imposing a ceiling on all entrants, as the Simpson proposal does, Congress and the executive branch can plan and accommodate specific domestic concerns such as fertility rates, unemployment rates or world conditions.

The current legal immigration system has a built-in growth component. We currently exempt immediate relatives and refugees from an annual ceiling, even though they make up over half of legal immigration. It's analagous to the Gramm-Rudman-Hollings law which requires a balanced budget, while exempting over half the budget from cuts.

Some experts notice the inherent growth in our legal immigration system, but brush aside the demographic implications. At the December 11 hearing, federal officials stated that total immigration of immediate relatives has held steady at seven percent each year. Nearly everyone at the hearing stated that a seven percent increase is of no major concern. Mathematicians, however, will tell you that a constant rate of seven percent means that in only 10 years the population made up of immediate relatives will double. Sure enough, since 1977 the largest component of legal immigration, immediate relatives, has doubled in size.

Today, there is no reason why immigration levels should be increased. The Rockefeller Commission on Population Growth and the American Future in 1970 recommended that the U.S. "welcome and plan for stabilized population." The Commission added, "we have looked for, and have not found, any convincing economic argument for continued national population growth. The health of our economy does not depend on it. The vitality of business does not depend on it. The welfare of the average person certainly does not depend on it."

In 1978, Thomas Espenshade of the Urban Institute published a major review of research examining population growth and the health of the U.S. economy. He concluded that the overall consensus among economists was that slowing growth rates "would appear to be positive, in terms of per capita measure of economic well-being. This review of the recent literature on the economic implications of slowing population growth ...suggests that the health of a nation depends far more on the wisdom of its economic policies than on its underlying demographic trends."

Rapid population growth in the U.S. has generated hardship, not prosperity, for young Americans families. Economists Frank

Levy of the University of Maryland and Richard Michel of the Urban Institute have concluded, "The young middle class (particularly the baby boomers) has experienced a dramatic decline in its ability to pursue the conventional American dream: a home, financial security and education for one's children."

In numerous polls, the American people have expressed opposition to increasing immigration. If Congress is comfortable with current rates of immigration, the only way to stabilize that number is by imposing a ceiling on legal immigration which includes immediate relatives and refugees.

The Simpson proposal retains family reunification as a high priority, but at the same time sets aside a sizeable number of visas designed to accommodate future U.S. labor market needs.

While ZPG believes that labor market considerations are important, we feel it is just as important for the federal government to redouble its efforts to train our current population.

We have to reinvest here. Just as we can't go on forever counting on foreigners to pay for our budget deficit, we can't depend on immigrants to make America competitive again. If a low U.S. fertility rate continues, business and government will have a great opportunity to succeed in providing the quality education needed to compete effectively in a labor-saturated world. "The wellspring of economic growth," says James Howell of the Bank of Boston, "is education, technology and capital."

Annual Report

The annual report required in Senator Simpson's bill is a wise step toward providing Congress and the executive branch with the information needed to develop sound immigration policy.

However, before Congress asks the Justice Department to prepare any more reports, it must first recognize the terrible shape of our present statistical foundation.

Progress has been slow since 1983 when the National Academy of Sciences concluded that, "we really do not know anything concrete about the costs and benefits (of immigration) because the basic statistics are so limited; policy has been made in a data vacuum that should naturally be abhorred by policy makers."

While Congress is asking INS and other federal agencies to produce a dozen immigration reports in connection with IRCA, the Office of Management and Budget is using the Paperwork Reduction Act as a mandate to eliminate nearly all data collection.

At the INS, research and development is at the bottom of the list of program priorities. We feel strongly that more resources and emphasis should be placed on data collection at the agency.

Further, we recommend that the Census Bureau and environmental agencies, such as the Council on Environmental Quality, share the responsibiity of preparing the annual report on immigration impacts. Only those agencies can provide credible information and analysis on the demographic, environmental and resource impacts resulting from increases in U.S. population growth.

Immigration Pressures Are Likely to Increase

Without a change in present trends, the world's population will top six billion by the year 2000 - increasing by 84 million a year. (That's equivalent to adding another United States to the world's population every three years.) Ninety percent of this growth will occur in Latin America, Asia and Africa, where hundreds of millions of people will be streaming toward cities looking desperately for work.

According to the International Labor Organization, the world will need to provide one billion new jobs by the end of the century to keep unemployment from rising. Already 500 million of the world's people either have no jobs or are so badly underemployed that they have difficulty making a living at even a subsistence level. Defeated by recession, deep debt and austerity programs, increasingly they will look to the United States for help.

In Mexico, for example, an additional 900,000 people enter its labor force every year. According to Fidel Velasquez, leader of the Mexican Labor Confederation, "there are at least 2.5 million unemployed now and another 1.5 million underemployed." Adding to their labor woes is a near "free fall" in the peso which has contributed to triple digit inflation.

The October stock market crash brought into sharp focus the trend toward increasing global interdependence. In 1981 the Select Committee on Immigration and Refugee Policy foresaw this trend and concluded "that the world situation throws into serious question whether any nation can respond through domestic policy alone to what is already a problem that transcends national boundaries."

If this Subcommittee is serious about dealing effectively with both legal and illegal immigration, ZPG believes its Members should work collaboratively with other Senate committees to direct more U.S. financial and technical assistance to developing countries.

COMPARISON OF VISA NUMBERS UNDER CURRENT LAW AND KENNEDY/DONNELLY BILL

	Current law	Kennedy/Donnelly	Changes in definition of category
I. FAMILY PREFERENCES			
Immediate relatives (spouses and minor children; outside preference system).	(1)	(1)	Same
1st Pref. (unmarried adult sons and daughters of U.S. citizens).	54,000	32,400	Same.
2nd Pref. (spouses and unmarried sons and daughters of residents).	70,200	140,400	Limited to spouses and unmarried children under 21.
4th Pref. (married sons and daughters of U.S. citizens).	27,000	21,600	Same.
5th Pref. (brothers and sisters of adult U.S. citizens).	64,800	21,600	Limited to unmarried siblings and pending 5th pref.
Total family preferences.	216,000	216,000	
II. INDEPENDENT			
3rd Pref. (professions and exceptional ability).	27,000	27,000	Same.
6th Pref. (skilled and unskilled).	27,000	27,000	Limited to skilled.
Nonpreference	0	50,000	Adds 50,000 administered according to new point system
Total independent	54,000	104,000	

[1] No limit.

Point system for nonpreference visas

	Maximum points
Age	10
Education	12
Higher education	15
Vocational preparation	10
Desired skill	20
Experience in desired skill	10
Arranged employment	20
Adversely affected country	30
U.S. citizen sibling	10
Speak and read English	10
Total	147
Needed to apply	70

CRITERIA

Age: Minimum age is 18. Ten points for persons ages 18-40; deduction of 2 pts. for every year over 40.

Education: One point for each year of grade school through high school or equivalent.

Higher education: 10 points for college or equivalent; up to 5 additional points for post-graduate education.

Vocational preparation: The points needed for a particular job or skill would be determined by the administration, up to 10 points.

Desired skill: The administration would determine areas of shortages in skilled workers.

Experience: Up to 10 points for work experience in desired skill.

Arranged employment: Not subject to labor certification.

Adversely affected country: Determined by Department of State (36 countries are on the current list).

U.S. citizen sibling: Brother or sister of adult U.S. citizen.

ADVERSELY AFFECTED COUNTRIES

ALBANIA [57] 0
ALGERIA [17] 15
ARGENTINA [566] 170
AUSTRIA [1,740] 82
BELGIUM [701] 63
BERMUDA [9] 6
CANADA [5,000] 2,078
CZECHOSLOVAKIA [873] 27
DENMARK [845] 54
ESTONIA [185] 7
FEDERAL REPUBLIC OF GERMANY (WEST GERMANY) [5,000] 311
FINLAND [318] 39
FRANCE [1,945] 201
GERMAN DEMOCRATIC REPUBLIC (EAST GERMANY) [5,000] 20
GIBRALTAR [6] 1
GREAT BRITAIN AND NORTHERN IRELAND [5,000] 1,181
GUADELOUPE [18] 0
HUNGARY [3,805] 32
ICELAND [19] 4
INDONESIA [816] 810
IRELAND [5,000] 3,112
ITALY [5,000] 315
JAPAN [562] 518
LATVIA [368] 1
LIECHTENSTEIN [5] 0
LITHUANIA [481] 3
LUXEMBOURG [58] 0
MONACO [3] 0
NETHERLANDS [3,479] 108
NEW CALEDONIA [4] 0
NORWAY [1,858] 9
POLAND [3,019] 592
SAN MARINO [84] 0
SWEDEN [1,197] 129
SWITZERLAND [1,004] 96
TUNISIA [39] 16